SMALL BUSINESS AND MINORITY SMALL BUSINESS PROCUREMENT OPPORTUNITIES ACT OF 1994

HEARING

BEFORE THE

COMMITTEE ON SMALL BUSINESS
HOUSE OF REPRESENTATIVES

ONE HUNDRED THIRD CONGRESS

SECOND SESSION

WASHINGTON, DC, APRIL 28, 1994

Printed for the use of the Committee on Small Business

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SMALL BUSINESS AND MINORITY SMALL BUSINESS PROCUREMENT OPPORTUNITIES ACT OF 1994

THURSDAY, APRIL 28, 1994

HOUSE OF REPRESENTATIVES,
COMMITTEE ON SMALL BUSINESS,
Washington, DC.

The committee met, pursuant to notice, at 11 a.m., in room 2359–A, Rayburn House Office Building, Hon. John J. LaFalce (chairman of the committee) presiding.

Chairman LAFALCE. The Small Business Committee will come to order.

I wonder if the panelists would come to the table: Dr. Kelman, Ms. Duran-Owens, Ms. Laverdy, and Ms. Nelson.

The purpose of today's hearing is to examine the small business aspects of the procurement reform legislation currently moving through the Congress. H.R. 4263 is made up of provisions which are within the jurisdiction of the Committee on Small Business but which are meant to supplement and complement provisions contained in H.R. 2238, the Federal Acquisition Improvement Act of 1994, which has been reported out of the Committee on Government Operations and marked up by the Committee on Armed Services.

Our committee intends to expedite consideration of H.R. 4263 so that the entire procurement reform legislation is not delayed in reaching the floor. Indeed, this bill could easily be merged with or subsumed by H.R. 2238.

First, let me say that I believe President Clinton and Vice President Gore deserve a great deal of credit for confronting the Federal procurement difficulties that we have and for making this historic effort to streamline a system which has gotten out of control and is costing the taxpayers unnecessary billions of dollars. Defense Secretary Perry and OFPP Administrator Kelman also deserve great credit for bringing procurement reform forward as a major legislative initiative.

Finally, I would like to congratulate my colleagues, Chairmen John Conyers and Ron Dellums, and our Small Business Procurement Subcommittee Chairman Jim Bilbray, for their excellent work on procurement reform over many years, and most especially over the last few months.

Turning to the substance of procurement reform and its effect on small and small minority businesses, I would like to emphasize one overriding principle: There can be no legislative procurement re-

form if such reform has significant adverse effect on the ability of the small and small minority businesses to participate as government suppliers of either military or commercial items.

As the Vice President emphasized in his National Performance Review, government agencies exist to serve the public, not the other way around. That part of the American public which are small and minority small businesses are simply too important to the economic and social fabric of the Nation to be sacrificed for the mere administrative or even budgetary convenience of any Federal agency. That is important to understand.

Small business, moreover, has been the engine of almost all American job creation in the last several years and will continue to be so in the foreseeable future. Any legitimate procurement reform needs to enhance the prospects of small and small minority businesses, not diminish them. Unfortunately, some of the agencies, as was brought out by Chairman Bilbray's hearing last summer on illegal contract bundling, have been using the rubric "procurement reform" to do what is easier for themselves rather than what is best for the American public.

In this regard I am pleased to note that both H.R. 2238 and H.R. 4263 taken together will have an extremely positive impact on small and minority small businesses. They will greatly increase the number of contracts exclusively reserved for small businesses from all contracts under $25,000 to all contracts under $100,000. This change should mean an additional $1- to $2-billion of acquisitions a year will flow to the small and minority small business sector.

Heretofore, contract opportunities which were thus reserved for small businesses have not been required to be advertised in Commerce Business Daily. I am very pleased to note that H.R. 2238 has specifically the waiver of such CBD publication to the implementation of an electronic data interchange system which will thereafter provide notice of such contracts to small businesses.

Both these bills also make another extremely significant change. The Small Business Act is amended to apply to every Federal agency, the 5 percent goal for minority small business that currently applies only to the Pentagon. As far as all the civilian agencies are concerned, this is the most significant and far reaching chance for small business since the establishment of an 8–A program back in the 1960's. The bill, however, will not affect the present DOD program which will continue and change.

I believe that H.R. 4263 and H.R. 2238 together constitute landmark procurement reform legislate. They also constitute a major advance for small and minority small businesses. I am pleased to join Chairman Bilbray, Chairman Conyers, and Chairman Dellums as a part of this historic effort, along with the Ranking Minority Members of each of those committees and subcommittee.

We have a distinguished panel before us this morning. But before we begin, perhaps there are opening statements. First, I will call upon the Ranking Minority Member, and then I will call upon Chairman Bilbray.

[Chairman LaFalce's statement may be found in the appendix.]

Mrs. MEYERS. Thank you, Mr. Chairman.

I am glad we are having this hearing to discuss H.R. 4623. I think this legislation is important because it contains measures to

ensure that small businesses are a vital part of the procurement process.

In particular, H.R. 4623 directs the Administrator to coordinate efforts to allow small businesses to access contract announcements and to submit bids by computer. I think this notice provision is very important because it utilizes today's technology to greatly improve notice to small businesses about Federal contracting opportunities.

Another key improvement is the increase in the small business research from 25,000 to 100,000. As these proposals to reform the Federal procurement process have moved forward, I think it is really important that we take care not to destroy the small business protections that we have built into the system.

As we hear testimony on this bill, I hope we will discuss the promotion of opportunity for small business openly and honestly. I am not convinced that many agencies do their very best in this arena, and that is why this committee has acted to place protections in the law.

H.R. 4623 proposes implementation of a governmentwide goal of 5 percent of all contracting dollars for minority-owned business, a goal to be reached if necessary by the use of set-asides and preferences. Women-owned businesses now receive less than 2 percent of Federal prime contracting dollars, and barely more than 2 percent of subcontracts. Yet they own approximately one-third of all small businesses.

It seems amazing that we have so long neglected the plight of women-owned business who have been denied the opportunity to provide goods and services to the government that their tax dollars help fund. To continue to ignore the inequity in the system for this segment of the small business community is shortsighted and I believe it reflects poorly upon all of us.

Mr. Chairman, I thank you for your efforts on this bill and your desire to ensure opportunity for all small businesses. You are to be commended for your efforts. I look forward to hearing from the witnesses today.

[Mrs. Meyers' statement may be found in the appendix.]

Chairman LAFALCE. Thank you.

Chairman Bilbray.

Mr. BILBRAY. Thank you, Mr. Chairman.

I welcome these hearings today because, as the Chairman knows, the Armed Services mark did not include small business provisions. Hopefully this H.R. 4263 could be merged with the Armed Services mark before it goes to the floor of the House, and maybe the Chairman could prevail on the Chairman of the Armed Services Committee not to go to the Suspension Calendar but to go to the Rules Committee to merge these bills. I think they are necessary.

We had an extensive hearing on the bill I authored, which is very much identical to 4263, and I support the mark, when we have the mark, in H.R. 4263. To not have this as part of the overall reform would be a shame and would be really detrimental to the small businesses of this country.

Thank you.

Chairman LAFALCE. Are there any other statements that any others wish to make at this point?

Ms. Clayton?

Mrs. CLAYTON. Thank you, Mr. Chairman.

I want to thank you for holding the hearing on H.R. 4263, the Small Business and Minority Small Business Procurement Opportunity Act.

This issue of procurement reform is indeed an important one. However, in working to streamline our government's procurement process, we should mindful of not undoing many of the safeguards we have put in place to ensure minority, women-owned small businesses have a chance to compete for government contracts.

The Chairman agrees with the need to continue to safeguard these economically and socially disadvantaged businesses. His legislation, H.R. 4263, will extend the 5 percent minority procurement goal to all government agencies. I appreciate his support for this effort.

However, I would like to raise a question. Should we not be perhaps, while expanding the goals governmentwide, considering raising the goal to 10 percent? Also, should we not create a separate goal for women businesss?

In my home State of North Carolina, our North Carolina Department of Transportation has established a goal of 10 percent for minority businesses, and a separate goal of 5 percent for women.

During our discussion today on this issue, I would like to hear comments from my colleagues and our witnesses today about such an arrangement.

Again, Mr. Chairman, I thank you for holding this hearing. Thank you for this leadership.

Chairman LAFALCE. Are there any others who wish to testify?

Then we will begin. We will first hear from the newly appointed Administrator for Federal Procurement Policy, Dr. Steven Kelman.

TESTIMONY OF STEVEN KELMAN, ADMINISTRATOR, OFFICE OF FEDERAL PROCUREMENT POLICY

Dr. KELMAN. Thank you, Chairman LaFalce. Thank you, Congresswoman Meyers and other members of the committee.

If I could, before I start, today is "National Bring Your Daughters to Work Today," and I would like, if I could, to introduce my daughter, Jody Kelman.

She doesn't want to be introduced.

Chairman LAFALCE. I think Jody is mad at her dad for doing that.

Dr. KELMAN. She just said she is going to get me for this afterwards.

Chairman LAFALCE. Jody, would you get mad at the Chairman if he asked you to stand?

Ms. KELMAN. Yes.

Dr. KELMAN. I will give you a report on what happens to me afterwards.

Chairman LAFALCE. Your testimony hasn't started out too well so far.

Dr. KELMAN. Could I just leave at this point?

Chairman LAFALCE. Do we have any other daughters in the room today of employees, Executive or legislative branch? Earlier

we had at least four who we introduced at an earlier hearing this morning. We are glad to have a fifth.

Dr. KELMAN. I will just stop while I am behind. She is a good kid. She is a very good kid.

Chairman LAFALCE. You brought her along so we would be easier on you.

Dr. KELMAN. Whatever. Originally it was supposed to be yesterday. She wouldn't have gotten to come along if it was yesterday. At any rate, I would appreciate if my written statement could be entered into the record.

Chairman LAFALCE. Without objection, so ordered.

[Dr. Kelman's statement may be found in the appendix.]

Dr. KELMAN. As you know, during the hearings that have been held before Congress on procurement streamlining legislation that has been both in the House and the Senate, I have said in front of each of those hearings, not just today, but I want to add today, that the administration views small- and minority-owned business companies as fundamental and a critical source of supply for the government.

I am pleased to note the increases in participation by small business and small disadvantaged business in Federal contracting over the last few years.

The Government data shows that between fiscal year 1990 and fiscal year 1993, during a time when the total number of procurement dollars spent is about constant, small business participation in Government contracting increased from $35 billion a year to $39 billion a year, and during the same period, participation by minority, small and disadvantaged business grew even more dramatically, by over 50 percent.

I would also like to take some time this morning to put my testimony in the context of the administration's efforts to streamline the Federal acquisition process. Over the next few weeks, with the cooperation of the Congress and the administration, we have an opportunity for the first time in many years to make significant changes in procurement procedures that will improve the ability of Federal agencies to provide substantially increased value to taxpayers, which is what the procurement process is all about.

That is an effort we know you support and we continue to seek your collaboration. We believe that as we implement needed changes in the procurement system, we will at the same time improve overall access by small and small disadvantaged business to procurement opportunities.

Over the last 25 years, the Federal acquisition system has evolved into a complex, burdensome maze of laws and regulations that discourage Federal employees from exercising prudent discretion and business judgment and fails to provide significant incentive to contractors to deliver quality.

The Vice President's National Performance Review and the Acquisition Law Advisory Panel of the U.S. Congress or to the U.S. Congress on Defense Acquisition Law, the 800 panel have documented the need to streamline procurement procedures.

Over the past year representatives of the administration have been working with the professional staffs of this committee, I see a bunch of people I have gotten to know over the last few months

here, to implement the recommendations of the NPR and the Section 800 panel.

As we move forward to implement these recommendations, it is imperative that we balance the need to improve small business access to Federal contracting opportunities and the need to streamline the Federal contracting process.

Streamlining is essential if we are going to achieve budget savings, and as you know, one of the key recommendations of the National Performance Review has been to cut 252,000 workers from the Federal work force. Congress has increased this number to 272,000. You folks have voted on this.

Many of these positions are intended to be procurement positions. I want to emphasize that we simply cannot achieve these downsizing goals without procurement streamlining. The goals that have been voted on by Congress.

So with these overall statements in mind, I would like to address some of the specific provisions of H.R. 4236.

First, I would like to talk about the role of the Small Business Administration and the issue of electronic commerce. Section 28—or a new section would be added by the bill to the Small Business Act to require SBA's participation in government efforts to expand the use of electronic commerce and electronic opportunities for business to participate in Federal contracting, that both you, Chairman LaFalce, and you, Congresswoman Meyers, referred to in your introductory statement.

I want to make clear that the rapid expansion of electronic commerce is a very, very important priority for the administration. The President issued an executive memorandum last October regarding a rapid buildup of electronic commerce.

We agree with your statement, Congresswoman Meyers, that electronic commerce will increase the opportunity dramatically for small business participation in the contracting process. We are working very hard on bringing that expansion about.

I want to assure you that independent of what the committee or the Congress decides regarding the linkage of an increase to the simplified acquisition threshold to electronic commerce, independent of whatever the decision is on that, I will promise to you my continued personal effort as Administrator of the Office of Federal Procurement Policy to the rapid expansion of electronic commerce. It is already a topic to which I am devoting significant amounts of my personal time, and I will continue to do so.

As you know, the administration has expressed concern and we continue to express concern today about a requirement that the increase in the simplified acquisition threshold be linked to the use of electronic commerce. We believe that the increase in the simplified acquisition threshold tied in with the increase in the small business reservation of $100,000 is a justified proposal on its own merit and it shouldn't need to be linked to another proposal.

We think these two things should be kept separate. They are both valid proposals on their own merit and they shouldn't be linked to each other.

Again, I want to say, no matter what Congress decides on this, we will work as rapidly as we can to expand electronic commerce

and to expand the small business opportunities that electronic commerce brings about.

Let me talk a bit about the small business reservation. We support the increase of the small business reservation to $100,000, as long as the simplified acquisition threshold is simultaneously increased to $100,000. That is to say, as we move up the simplified acquisition threshold, we support moving up the small business reserve in connection with that.

However, we also, I should add, appreciate and support the provision in Section 3 of the bill that waive the small purchase reservation for micro purchases under $2,500. This is an important priority to the administration and we appreciate your support on this.

However, we do have concerns about any mandated use of fast payment terms that is suggested in the legislation, because of reported abuses by some suppliers who have sent invoices on occasion to the government for items that have not been delivered to the Government.

For this reason, we have within the Government limited fast payment procedures to contracts under $25,000 where there is a significant geographic distance between the supplier and the payment office. We understand that the bill calling for the use of fast pay procedures, "whenever circumstances permit," and we hope to continue to be allowed to have flexibility and be able to use good business judgment in this regard.

Let me talk a bit about contracting goals for small businesses and small disadvantaged business that are discussed in the legislation, and that, Chairman LaFalce, you said in your opening statement were some of the most important provisions of your bill, and that Congresswoman Clayton also referred to in her opening statement.

I would like to say to you, Chairman LaFalce——

Chairman LAFALCE. I think those provisions have been in all the bills, Mr. Bilbray, Chairman Conyers, Chairman Dellums, et cetera——

Mr. KELMAN. I was referring to them because you referred to them in your statement. The administration supports those provisions, and we are happy to add our endorsement to them.

We do feel that we have some concerns about provisions in Section 5 of the bill, and we would like to raise some objections to some of the provisions in Section 5. Those that add on a long series of areas where the Small Business Administration is asked to develop various kinds of regulations. There are a large number of them in the bill.

We are concerned, although it is our understanding that this section of the bill is intended to assure that the provisions don't apply to the Department of Defense Section 1207 Program on small and disadvantaged business set-asides, nonetheless we believe that many of these additional provisions regarding the SBA in the bill interfere with the statutory authorities of the Secretary of Defense, the GSA Administrator, the NASA Administrator, and the Administrator of the Office of Federal Procurement Policy to promulgate procurement regulations governing the acquisition of supplies and services in the executive branch.

The current regulatory system, which is established by Congress under the Office of Federal Procurement Policy Act, ensures that a wide range of views are considered as regulations are developed. We believe that this existing system is best suited to achieve the goals of Congress and the administration. Therefore we cannot support the provisions of Section 5, these provisions, as presently drafted.

I would note that I already, as Administrator, have the responsibility to consult with SBA as I carry out my responsibilities under the OFPP Act, and have done so on numerous occasions in connection with the development of the administration's procurement reform legislation.

Let me conclude my testimony with a discussion of the administration's goals about streamlining the acquisition of commercial products. An essential element of maintaining an adequate industrial base for the requirements of our national defense is the conversion of defense industrial base to commercial practices. A key to achieving those goals is development of dual-use technologies, commercial practices, and reduction of defense unique production lines.

A number of these laws are Government unique laws and requirements and are modified or waived in H.R. 2238. One of the provisions that appeared in H.R. 2238 but does not appear in the committee's bill regards elimination of the requirement for the flow-down of small and small disadvantaged subcontracting plants to subcontractors vis-a-vis their own subcontractors.

Chairman LAFALCE. Let me stop you right there. Let me underscore the point you are about to make. Let me crystallize the issue. Let me join the issue. This is the provision that when I discovered it was in the Armed Services bill gave me the most consternation. It made me reluctant to simply waive the jurisdiction of the Small Business Committee when no one had ever even approached me prior to my awareness that it was in the Armed Services bill, and even discussed the issue with me. No one from the Congress, no one from the administration, et cetera, and especially since it runs counter to the efforts of this committee and its predecessor Chairman and this Chairman over many years to extend the requirements that exist on prime contractors to subcontractors.

So this is a tough sell. Go ahead.

Dr. KELMAN. Let me, if I could, explain the administration's position on this. As you probably know, the Section 800 panel on streamlining Department of Defense acquisition recommended total elimination of subcontracting plans for commercial items, not for weapons systems, not for planes and bombers and so forth, but for commercial items.

We know and have listened to the positions of people from the small and small disadvantaged business community opposing that 800 panel. The administration has tried to come up with an equitable compromise proposal that says that, first of all, these provisions continue to apply at all levels for noncommercial items.

However, what we have said—and they would continue to apply at the prime contractor level vis-a-vis their own subs, in other words, that even for commercial items, if you are a commercial company selling commercial items to the U.S. Government, you

would still be required to have subcontracting plans for your own subcontractor.

We have argued, however, number one, that it is simply not reasonable to demand that a commercial company, many of which refuse to do business with the Government at all, that a commercial company be required by the U.S. Government when they are selling commercial items to the U.S. Government, to go to their subcontractor and say, you subcontractors, you have to have a subcontracting plan for your subcontractors.

Commercial companies are not willing—this is America. They are not going to be willing to go to their subcontractors and to say, we are going to tell you subcontractors how you do business vis-a-vis your subcontractors. We simply don't feel that that is reasonable.

Number two, we believe that because there are many commercial companies that refuse to do business with the Government at all because of provisions like this, because they say, We refuse to go to our subcontractors and tell them, you have to go to your subcontractors and tell them how to do business.

Chairman LAFALCE. Why should we distinguish between military contracts and commercial contracts?

Dr. KELMAN. Because military contracts are already involved in a network of relationships with the Government. These commercial companies sell mostly to the commercial marketplace.

Chairman LAFALCE. Why should we apply it to prime commercial contracts and not to commercial subcontractors?

Dr. KELMAN. We have tried to develop an equitable compromise that takes——

Chairman LAFALCE. Why compromise on the issue? If the subcontractors want to do business on a Government contract, either directly or indirectly, why shouldn't they adhere to the law of the land? Why should we have to make a special exception? It is simple. The Federal Government has certain rules and regulations. You make your best faith efforts, if you are a contractor. If you are a subcontractor working under Federal money, you make your best faith efforts.

Dr. KELMAN. Sir, these companies are companies that do only a small portion of their business with the Federal Government. Many of them refuse to do business with the Federal Government at all.

They have subcontractors——

Chairman LAFALCE. Do you have any data which indicates there is a paucity of commercial subcontractors willing to do business with the Government because of this provision, which has existed since we passed Public Law 95–507 in the 95th Congress, and this is the 103rd Congress.

Dr. KELMAN. There are many commercial companies that refuse to do business with the Federal Government. Many computer companies——

Chairman LAFALCE. Do you have a problem in finding adequate contractors to do business with the Federal Government because of those provisions?

Dr. KELMAN. Yes, frequently we cannot buy commercial items. The commercial companies will not do business with us and we pay a lot more to get Government-unique items.

Chairman LAFALCE. You are going to have to give me some real strong proof on that and maybe we are going to focus in, have a special hearing on those companies that refuse to do business with the Federal Government because of the provisions of 95–507. Please submit such a list. I would like to call all those contractors in.

Dr. KELMAN. One thing I would say to you, the list of companies that refuse to do business with the Federal Government, we would probably have a computer print out this big.

Chairman LAFALCE. Because of 95–507. I would be very interested to know who they are. Maybe other members of the committee would be interested in knowing who they are, too.

Mr. COLLINS. I am probably one of them.

Mrs. MEYERS. May I ask a question? You said that you were suggesting a compromise. Will you run through that again?

Dr. KELMAN. Yes, ma'am, I would be happy to. The original Section 800 panel that reported to the U.S. Congress said, Let's eliminate the subcontracting plans entirely for commercial items. Get rid of them.

That has been, to be honest, the position earlier in these discussions with the Department of Defense, because they believe it is interfering with commercial companies being willing to do business with the Government. The compromise we have suggested is to say, let's continue to apply subcontracting plans at the prime level vis-a-vis the prime sub.

So if I am a commercial company that is selling commercial items to the U.S. Government, as a condition for selling those commercial items to the U.S. Government, I should have to have as the company subcontracting plans for my subs.

Our compromise is to say we do not then go down further tiers. We don't say as the law says now that subcontractors to these companies, if the subcontractor is over a certain amount of money, must have subsubcontracting plans vis-a-vis their own subs. That is the compromise, that we say that the prime must have subcontracting plans vis-a-vis their subs, but you subs need not have subcontracting plans vis-a-vis their subsubs.

We believe this is only reasonable. We also believe, although this is hypothetical, that this may actually increase the use of subcontracting plans, because if some companies that refuse to do business with the Federal Government now at all because they will not put up with these burdensome requirements, they are not willing to go to their commercial subs where they have a small percentage of their business with the U.S. Government and say, subs, here is how you have to do business vis-a-vis your subs.

If some of them can be brought into Federal contracting because of this reasonable change, they then fall under the sway of having to have subcontracting plans vis-a-vis their own subs. So, we may actually be increasing the use of subcontracting plans. If we can bring in new firms that refuse to do business with the Federal Government now, they then will become subject to having to have subcontracting plans as primes for their own subs.

So it is in no way the case necessarily—we don't really know—but it is in no way the case that the number or the extensiveness of subcontracting plans would diminish. But what we do know is

that this will increase competition, lower the prices that the Government pays, and just introduce a modicum of common sense into this process.

Chairman LAFALCE. I am going to go on in regular order and hear from all the other witnesses. Then we will have full committee questioning.

Chairman LAFALCE. Is Ms. Duran-Owens here? She is not?

We will next here from Ms. Marina Laverdy, the acting executive director of the Latin American Management Association.

TESTIMONY OF MARINA LAVERDY, ACTING EXECUTIVE DIRECTOR, LATIN AMERICAN MANAGEMENT ASSOCIATION

Ms. LAVERDY. Thank you, Mr. Chairman, and members of the Small Business Committee. My name is Marina Laverdy. I am the acting executive director for Latin American Management Association, LAMA is a national trade association which serves the Hispanic and minority business communities by promoting the interests of minority businesses in both the public and private sectors.

LAMA is participating in the Small Business Working Group on procurement reform, and we endorse the testimony being given today by Ms. Colette Nelson of that group. Our testimony today is meant to supplement the testimony of the Small Business Working Group by emphasizing areas of particular importance to LAMA's membership.

LAMA is also a member of a coalition of minority trade associations, including the Asian American Business Roundtable, the Black Presidents' Roundtable Association, the Latin Business Association of Los Angeles, the Minority Business Association of Northern Virginia, the Minority Business Enterprise Legal Defense and Education Fund, the Native American Businesses, the Hispanic Chamber of Commerce, the Laguna Industries, and the National Indian Business Association.

This coalition was established in 1993 to advocate positive changes to the SBA's Section 8(a) program and other programs for minority businesses.

The coalition has been advocating, among other changes, the extension of the Section 1207 program to all civilian agencies. The coalition is pleased that H.R. 4263 as well as other pending reform legislation adopts this concept.

Our comments today will focus today on Section 5 of H.R. 4263, the Small Business and Minority Small Business Procurement Opportunities Act of 1994.

However, we recognize its provisions must be assessed in the context of H.R. 2238, the Federal Acquisition Improvements Act of 1994, ordered reported in July 1993 by the Committee on Government Operations, and the substitute ordered reported on April 21, 1994, by the Committee on Armed Services.

We commend Chairman LaFalce for raising objections to the proposed Armed Services Committee substitute to H.R. 2238. We commend him for introducing H.R. 4263, the Small Business and Minority Small Business Procurement Act of 1994, and for holding this hearing.

Indeed, many of the measures in the H.R. 2238 substitute bill would, if enacted, have serious implications for the small business

community. Therefore, we feel that it is particularly appropriate that the Small Business Committee has chosen to closely review those procurement reform measures that relate not only to the Small Business Act but to small minority businesses generally.

As previously noted, LAMA and the other members of our coalition strongly support implementation of a governmentwide SDB Program. We prefer Section 5 of H.R. 4263 to the corresponding section, 9002, of the H.R. 2238 substitute bill.

We agree that the Small Business Administration should play a role in establishing guidelines and enforcing the governmentwide SDB Program. The SBA has an established track record in the oversight of minority small business programs. For example, the SBA is responsible for making eligibility determinations under DOD's Section 1207 Program when SDB eligibility is challenged.

In addition, the SBA's involvement in the Governmentwide program will promote uniformity and avoid a fragmented and uneven approach among individual agencies.

Therefore, any extension of the SDB Program to all Federal agencies must ensure that the SBA plays a role in both the development of program procedures as well as the enforcement of program requirements. Neither the Office of Federal Procurement Policy nor the individual agencies are equipped to handle these tasks alone.

We strongly support the creation of incentives for prime contractors to increase awards to SDB subcontractors. Such incentives are critical, particularly given recent trends in Federal contracting with the increasing use of contract bundling and the current emphasis being placed on streamlining the acquisition process.

It will become increasingly important that prime contractors adhere to their obligation to subcontract to SDB's.

Given the importance of this issue, we feel that Section 5 and Section 9002 of the H.R. 2238 substitute bill should go a step further to require that incentives be in place within 1 year after passage of the act.

Further, the bill should identify at least some of the specific incentives that should be implemented. For example, as a separate evaluation factor, solicitation should require that prime contractors identify SDB's in their proposals, including their committed level of participation.

In addition, the failure of a contractor to meet its negotiated SDB subcontractor goal should trigger an audit into the contractor's outreach program.

We are also pleased to see a provision in H.R. 4263 that requires contracting officers' performance evaluations to include as one factor the ability to increase SDB awards. Again, this requirement will create a definitive incentive for contracting officers to achieve the statutory SDB goal.

With the trend toward these contracts, these and other incentives are essential to protect the interests of small minority businesses.

H.R. 4263 and Section 9002 of the H.R. 2238 substitute bill should be revised to make clear from the outset that the 5 percent goal is a recommended minimum and not meant to permit agencies with higher goals to decrease those agency specific goals.

As the committee is aware, many civilian agencies currently implement programs that establish goals higher than 5 percent. We recognize that later in the bill it is stated that the 5 percent goal should not supersede other laws. However, the perception remains that an agency that currently implements a 10 percent goal can or should reduce that goal to 5 percent.

The reduction of current goals which are above 5 percent should be expressly discouraged. Agencies should also be encouraged to exceed the recommended 5 percent goal.

In addition, we believe that the bill should state clearly that the ultimate objective is to increase SDB participation well beyond the 5 percent goal.

Within this classification, agencies now implementing SDB goals above 5 percent may view the legislation as an opportunity to reduce their current goals to bring them in line with the Government standard.

H.R. 4263 would allow an agency to adjust the 10 percent price preference if available information shows that nondisadvantaged small businesses are being denied opportunities. The threat of losing the preference would have a serious economic impact on SDB firms.

This overall broad provision would give agencies nearly unfettered discretion to decrease or even eliminate the 10 percent preference and should therefore be eliminated. The term "available information" upon which the preference may be adjusted is sufficiently vague as to constitute nearly any compilation of data imaginable. Large businesses seeking particular contracts will be encouraged to flood contracting officers with self-serving and one-sided data.

The bill does not place any requirement on contracting officers to verify the accuracy of the data presented, nor is there any objective statistical data to identify the criteria that would serve as a benchmark for determining whether nondisadvantaged businesses are in fact, being denied opportunities.

We strongly oppose Section 15(g)(9)(a) in H.R. 4263 that would allow individual agencies to determine whether a disproportionate share of SDB contracts are being awarded within a particular industry, and as a corrective measure to take appropriate actions to limit the further use of set-asides in that industry.

In 1988, Congress created the small business competitiveness demonstration program as a pilot program to restrict set-asides in specific industry categories until 1996. Until the results of this program are reviewed in 1996, and the impact of restricting set-asides more fully understood, the proposal to permit procuring agencies the power to decrease the SDB goal by industry classification is premature.

Thank you again for the opportunity to present our views to the committee. LAMA would be pleased to work with the committee and the Committees on Government Operations and Armed Services to develop appropriate language which protects the interests of the small minority business community.

[Ms. Laverdy's statement may be found in the appendix.]

Chairman LAFALCE. Thank you.

Our next witness will be Ms. E. Colette Nelson, the executive director of the American Subcontractors Association, but who is here today as the chair of the Procurement Committee of the Small Business Working Group, the Small Business Legislative Council, the National Center for American Indian Enterprise Development, the National Association of Minority Business, National Association of Women Business Owners, Independent Defense Contractors Association, American Gear Manufacturers Association, Interamerican Gear Manufacturers Association, National Small Business United, and the National Federation of Independent Business.

Go to it, Ms. Nelson.

TESTIMONY OF E. COLETTE NELSON, EXECUTIVE DIRECTOR, SMALL BUSINESS WORKING GROUP

Ms. NELSON. They always call me the coalition mommy and not the executive director.

As usual, I would like to submit my statement for the record and talk a little less formally.

Chairman LAFALCE. Without objection, so ordered.

Ms. NELSON. We have repeatedly been told before subcommittees of this committee and other committees of the House and Senate and are repeatedly told by Dr. Kelman, by committee members, by staff people, these bills are good for small business. I think the committee has to ask itself, if these bills are so good for small business, why do groups as diverse as MBELDEP and NFIB not support them?

The reason is real obvious. Although, indeed, these bills do take some baby steps for removing some impediments for small and minority business participation, they in fact, erect so many other barriers to participation that we have very serious concerns about the future of small business participation in the Federal procurement market.

During my oral testimony, I want to focus on——

Chairman LAFALCE. You are exempting our bills from those remarks.

Ms. NELSON. Of course.

Chairman LAFALCE. We needed a little clarification.

Ms. NELSON. However, I do want to point out some loopholes in your legislation.

Chairman LAFALCE. Good.

Ms. NELSON. As Dr. Kelman mentioned, one of the real foundations of the legislation is eliminating the small purchase threshold and replacing it with the more politically correct simplified acquisition threshold. Certainly very few of the businesses I represent or your constituents would consider $100,000 a small purchase.

Although we generally would support raising a small purchase threshold or simplified acquisition threshold to $100,000, that will only work if small businesses have access, know about the existence of these contracts and have the opportunity to make an offer on them. We do not think that any of the legislation pending goes far enough to making these contracting opportunities visible.

Again, our written testimony makes very specific recommendations in that regard.

Chairman LAFALCE. Don't we have linkage in our bill?

Ms. NELSON. You have linkage in your bill, Mr. Chairman, and that is an important first step. But, for example, the House Armed Services Committee bill says that an agency could go an interim step. Even at the Department of Defense, as Dr. Kelman points, we are only going to cover 80 percent of contracting opportunities. So, if they can certify, they no longer have to go to Commerce Business Daily and publish opportunities. Once they certify, 20 percent of all contracting opportunities disappear off the screen and we would have no access to those. We think that is a serious loophole. Twenty percent is a lot.

Chairman LAFALCE. We will give Dr. Kelman time to comment on that. I know he wants to.

Ms. NELSON. When I am referring to the Armed Services Committee bill, we are still referring to the discussion draft, because even though it has been ordered reported, we have not had access to the new legislative language. So, we may be—there may be changes to which we have not been privy.

Chairman LAFALCE. That makes it even more difficult for us to waive jurisdiction upon request when you don't know exactly what you are waiving.

Ms. NELSON. Absolutely, and we appreciate your helping us with this issue.

Our written testimony spells out some of our concerns with the proposals to increase the simplified acquisition threshold. One of those is improving local notices. Since the local notice procedures were put in place in 1984, the Federal regulation writers, the bureaucracy implementing Federal procurement law, have essentially done a statutory waiver of the local notice requirements. Quite frankly, local notice requirements say you have got to put it on a local bulletin board for 10 days. The agencies say, all you have to do is make three phone calls. The contracting officer get to choose which three businesses to call. Then he doesn't have to post it.

We have no disagreement with the outreach of the three phone calls, we think that is important. But we think other small businesses, not just the three personally selected by the contracting officers, should have an opportunity to bid. We think those notices should be put on the bulletin boards, left there for 10 days, and that no offer should be accepted until that 10-day period has expired.

Let me point out that the coalition wrote a letter to then OFPP Administrator Dr. Berman 10 months ago and are still waiting for a response about how the 1986 law should be implemented. The 1986 law has not been fully implemented. So, obviously we have real concerns about why we are going forward with new changes when 8 years later we are still trying to get the 1986 lawfully implemented.

We also have some concerns about the requirement in all of the legislation to automatically raise the small purchase threshold every 5th year for inflation. We note that the next increase would be in 1995. They are not waiting around very long. The threshold that is not going to be $100,000 very long. Just until next year under all the pending legislation. It will be raised automatically.

We note these are 98 percent of all procurement opportunities. We, at least, don't think this committee or any other committee of Congress should essentially waive oversight of 98 percent of contracting opportunities by putting in an automatic threshold increase.

We also think that any increase in the small business reserve should be tied to the small business reserve. Again, all of the bills do that. However, we note in the discussion draft of the Armed Services Committee bill they only raise the small business reserve to $100,000. They don't subsequently tie that to the automatic 5-year increase. So, in the future, the small business reserve would stay at $100,000 while the simplified acquisition threshold would continue to ratchet upwards.

We think the bill should make explicit the right of an offeror to submit an offer, even if the Government has received three bids as required under the Federal Acquisition Regulation. Let's face it. If you are the fourth bidder, and you may be the low bidder, to have a contracting officer say: "We already have three; we don't have to accept your bid; it is too much trouble to review a fourth bid." That has got real concerns, especially since we are talking about the simplified acquisition threshold where these contracts are mostly low-bid, fixed-price contracts. It is not that hard to review a fourth or fifth or sixth additional bid.

We also would like to suggest that the current bills lower their dollar amount for requiring detailed reporting requirements. All of the bills would leave detailed reporting requirements at $25,000. We would like to suggest that that be lowered to $10,000.

We lost sight of visibility of all of those contracting opportunities in 1986: How much is small business participating? How much is minority business participating? We would like to go back and recapture some of that data.

Finally, I would like to mention fast-pay procedures. Dr. Kelman says they are opposed to them because they have had some experience in the past with contractors not performing and then getting paid in advance. As Dr. Kelman well knows, the language that we have submitted, in fact, the language in the Senate bill, the language we would like to see included in the House bill, is specifically tied to performance. You don't get fast-pay unless you perform.

I think there is something fundamentally inequitable about a streamlining system, a reform package that purportedly helps small business, that says small business has less time to identify a contract opportunity, less time to bid, has to perform faster, but we are going to wait a long time to get paid.

There is something fundamentally wrong with where the speed-up is. The speed-up should be across the line and not just on those things that benefit the Government buyer. It should also benefit the seller.

I want to switch my comments now and address subcontracting requirements a little bit. Again, one has to be nonplused about claims that this will benefit small businesses and small disadvantaged businesses. I guess Dr. Kelman should be commended for developing a compromise. I would suggest that his compromise was developed in a vacuum, since at least the small and small dis-

advantaged business community did not know about it until it appeared in the House Armed Services discussion draft.

We have to be concerned about this broad waiver of subcontracting plans at the subcontractor level for commercial items. That sounds like we are buying a car or a computer. In fact, the definition of commercial items is very, very broad.

Second, we understand——

Chairman LAFALCE. Would you go into that a bit more?

Ms. NELSON. Of course. You will have to bear with me because there are about five different versions of this language floating around, as you well know. Generally, a commercial item is anything that is broadly sold to the public, something that is not broadly sold to the public but the public buys occasionally, and something that will be available for public purchase by the time the Federal Government is also ready to purchase it.

Many of the proposals on the table don't ever address whether the public actually has to buy something. It just has to be available for public purchase.

I would also say that we understand that it has been extended to services in the House Armed Services Committee bill and we can identify very few services, if any, that are not by their very nature commercial. If that language has, indeed, been added to the House Armed Services bill, then we would suggest that all services bought by the Government would not have subcontracting plans below the prime contractor level.

Further, it applies to not just prime commercial contracts, but all prime contracts, if the subcontractor is providing a commercial component. So, again, it is a very, very broad waiver.

This is coupled with language elsewhere in the bill that would greatly expand the use of bundled contracts. So, now subcontractors or small businesses have less opportunity to participate at the prime contract level, but there are very few incentives, if any, to use small and small-disadvantaged businesses at the subcontract level.

Let me point out as these contracts get bundled, a prime contractor is only required to use small and small-disadvantaged subcontracts, even a prime contractor, to the extent that it is using subcontracts at all, and that small businesses and small-disadvantaged businesses can perform those very large subcontracts.

So more and more frequently, small and small-disadvantaged businesses are participating at the sub-subcontract level and the sub-sub-subcontract level. So, again, this creates an enormous barrier for our participation.

I would suggest, as my colleague Marina Laverdy did before me, that if there is a real desire for a compromise, that the burden should be put on prime contractors across the Government to assure that there is participation at all levels of subcontracting for small businesses, for small-disadvantaged business, and for women-owned businesses. How do you do that? You make one of the criteria for the prime contractor's selection, the use of small and small disadvantaged businesses.

Right now it is done after the fact. If Dr. Kelman doesn't want to require a major systems prime contractor to require its subcontractors to do that, just require the major systems contractors

to do it. Make it a criteria of selection. You won't get the contract unless you assure that there is minority and small business and women-owned business participation at all levels of the subcontracting chain, not just at one level, as this proposal would do.

Again, I can't say too frequently that when my colleagues throughout Congress and in the private sector and in the executive agencies say repeatedly, this is good for small business, it doesn't make it so. It doesn't matter how many times it is said. It does not necessarily make it so.

Thank you, Mr. Chairman.

[Ms. Nelson's statement may be found in the appendix.]

Chairman LAFALCE. Thank you for your excellent testimony, Ms. Nelson. We will take every word into serious consideration.

We now have a representative from the Minority Business Enterprise Legal Defense and Education Fund. Without any disrespect intended to Ms. Duran-Owens, we would hopeful that the Chairman of the fund, the Honorable Mitchell, former Chairman of this committee, could testify today. Indeed, he is listed as the author of this testimony, but he couldn't. So, his very capable assistant, Ms. Duran-Owens, is here to testify instead.

Thank you.

TESTIMONY OF GUALE DURAN-OWENS, MINORITY BUSINESS ENTERPRISE LEGAL DEFENSE AND EDUCATION FUND

Ms. DURAN-OWENS. Thank you, Mr. Chairman. I apologize for my lateness.

I would like, since Mr. Mitchell's testimony has already been entered into the record, I would like to just make a few remarks, because I am sure that my able colleagues here have covered the issues that we are all concerned with.

They are issues that we have been coming in and testifying on before various committees since last year. I will go back and say probably since October of last year, meaning that we have been trying to discuss the importance of subcontracting plans and keep them in the procurement system as it exists now, because they seem to be the only inlet into the Federal marketplace that small and especially the minority business community has. Any efforts to change that has detrimental effects, as I am sure has been already stated.

My Chairman did want me to commend you for your efforts on behalf of the minority business community and especially some of the—I am sure the hits, if I may use that word, that you have taken, not only from the administration but probably from some of the prime contractor community, on your having come to our defense in the Dellums-Spence amendment discussions regarding these very issues. It is very good to have some of our legislators really go to bat for the issues that they believe are important to our community and really look out for those.

That is really the extent of my remarks, sir.

[Ms. Duran-Owens' statement may be found in the appendix.]

Chairman LAFALCE. Thank you very much.

Believe me, my efforts were not to impede the swift progress of any committee. My efforts were not intended to obstruct quick passage of good legislation. But it just seemed, upon first hearing of

it, the day before it was marked up and reported out, it cried out for consideration by this committee, and it seemed to me that it was almost impossible that some of the Members even knew what was in it. Otherwise they wouldn't have permitted it in their discussion draft.

But then I did, subsequent to that, have someone from the administration call me and say, We do want to eliminate the subcontracting provision. I said, Oh, it is for real.

Ms. DURAN-OWENS. Now you know what we have been up against since last year.

Chairman LAFALCE. So I said, we can't go along with that until we have a hearing and make a judgment, because I know people have fought so hard for so long.

Actually, I don't have any more questions right now. I am going to defer to the others.

Mr. Hilliard, do you have any questions?

Mr. HILLIARD. I have none, Mr. Chairman.

Chairman LAFALCE. Mrs. Meyers?

Mrs. MEYERS. My question would be to Dr. Kelman. If I understand this correctly, the requirement for firms to have a plan for small businesses and for their subs to have a plan and their subsubs to have a plan, the threshold for that would start at $100,000, everything over $100,000. I see heads shaking no, I see heads shaking yes.

Dr. KELMAN. Five hundred thousand dollars.

Ms. NELSON. Mrs. Meyers, it is $1 million for construction, and it only applies to businesses that are not small businesses. So, small businesses do not have to provide subcontracting plans themselves.

Mrs. MEYERS. So everything over $500,000 has to do this.

Now, what percentage of Federal contracts is that?

Dr. KELMAN. Where they have subcontractors who have——

Mrs. MEYERS. No. What percentage is over $5,000?

Dr. KELMAN. The prime contracts? Of the number of contract actions, it is very small.

Mrs. MEYERS. Five?

Dr. KELMAN. It is lower than 5 percent of the contracting actions are over $500,000. A very large percentage of the dollars, however.

Mrs. MEYERS. A large percentage of the dollars but a small percentage of the contracts. So, we are talking about a relatively small percentage of firms, then, if it is a small percentage of contractors.

Dr. KELMAN. That is correct.

Mrs. MEYERS. And so I would be interested, as the Chairman was, in having the names. Because I just can't think of firms that might have refused to do business with the Government that would be in that 5 percent group.

I would be interested in seeing a list that had refused to do business with the Government because they had to have a plan and their subcontractors had to have a plan.

Then maybe we could ask some questions about why, and not in a hostile way, if there is some very good reason why they can't, then maybe we can adjust this. But it just seems to me that if somebody is going to have a contract for $1 million, we should want

to make sure that a significant number of their subs and sub-subs and so forth are going to be small businesses.

Dr. KELMAN. Ma'am, as I said, there are a large number of commercial firms that refuse to do business with the Government because of the whole group of Government-unique requirements, and the very important ones that they have identified, and the business community in its testimony on procurement reform has specifically highlighted as a particularly burdensome requirement, are these requirements, particularly at the sub-subcontracting level.

What I would just ask you to do, if I could, is to put yourself in the position of a large commercial company the vast majority of whose business is not with the Federal Government, they are a commercial entity, they mostly sell to the commercial marketplace. They have a network of suppliers that sell them the things that they use to make their products.

What we are asking them as prime contractors to do is to get a small increment of business from the Federal Government, compared—these are billion, multibillion dollar corporations in many cases, to go to their network of subcontractors, who supply them to in turn supply companies, and say, As a condition to be my subcontractor, you need to develop plans vis-a-vis your own subcontractors.

If I were the CEO of that company, I would say I cannot ask that. Sometimes I have seen in the testimony the analogy made to foreign military sales, when let's say Boeing sets up a facility in Japan or something as a condition for doing business. So, they say, If Boeing is willing to do that to get the business in Japan, why can't we, the U.S. Government, ask our primes, commercial primes to do certain things?

Chairman LAFALCE. Do those sub-subs only apply to contracts in excess of $500,000 also?

Dr. KELMAN. Right. It applies to the $500,000 level. The false analogy is that these foreign sales that Boeing is making or whatever are a very significant portion of Boeing's business. They are a huge chunk of change. Lots of these commercial companies when the Department of Defense would like to get Wrangler jeans to bid on making denim uniforms for—not uniforms, denim, or whatever, for the military, that is going to be a tiny proportion of Wrangler jeans' business.

What they are saying is, we are not going to go and demand all these things of our subcontractors vis-a-vis their subcontractors in order to get this little incremental business.

Chairman LAFALCE. It is just of the Government contract, though. It is not of all the other contracts that they have.

Dr. KELMAN. No, but they have an existing network of suppliers that supplies them various things. They are not willing——

Chairman LAFALCE. Let's go to somebody that will be willing.

Dr. KELMAN. That is what we do now.

Chairman LAFALCE. Good. Well, let's continue doing it now.

Dr. KELMAN. I would ask you if you are willing, number one, to say to these businesses that they—because of this requirement, that I think does not comport with——

Chairman LAFALCE. Dr. Kelman, the administration is off on the wrong track on this one.

Dr. KELMAN. I appreciate your opinion. We respect your view, obviously. We feel we have tried to develop an equitable compromise.

Colette, if I can say for a moment, we developed this after talking with you and finding out that this was a big concern of the organizations you represent, and it was announced not in the Armed Services markup, it was announced at the House Armed Services hearings on this bill as which you were present. It took place weeks and weeks before the markup. The administration's position on this was not a surprise.

Ms. NELSON. Certainly, Dr. Kelman, the administration's position was not a surprise. The language that appeared in the House Armed Services markup was a surprise. By the way, I was not at the hearing. I was in the hospital that week.

If I could address something, I don't want to challenge Dr. Kelman repeatedly, he is obviously doing an otherwise excellent job as OFPP.

Dr. KELMAN. Thank you.

Ms. NELSON. Let's not kid ourselves. Wrangler jeans has not been up before the committees of the House testifying to eliminate subcontracting plans. Companies like Boeing have been. Let's be clear what we are talking about here. I haven't seen Wrangler jeans and real commercial companies asking for this change.

Chairman LAFALCE. The thing I am concerned about too is, doesn't OFPP sponsor seminars, conferences, every single year, every 6 months, regarding performance under 95–507? Isn't it something that you are supposed to be doing, to ensure that people conform to the existing law? Do you know what your agency has been doing to ensure that since 95–507 was passed, that that law was adhered to?

I think each agency is supposed to be working on this with you. I personally have spoken at a number of such conferences over the years, but I don't keep track of it.

Isn't it something you are supposed to be monitoring to make sure that every agency is ahearing to that law?

Dr. KELMAN. We have no statutory authority to assure that agencies adhere. We do monitor and we continue to monitor. I presented to you today figures from the Federal Procurement Data System, which is under the Office of Policy Oversight of the Federal Procurement Policy showing that bipartisan, under Democratic and Republican administrations, we have done a good job in the last few years dramatically increasing small and disadvantaged business participation in Federal procurement. So, yes, we do have a monitoring responsibility. We do take that seriously.

Chairman LAFALCE. What is this 800 thing about?

Ms. DURAN-OWENS. That is a good question.

Dr. KELMAN. The United States Congress in the defense authorization bill several years ago called for establishment of a panel to report to the U.S. Government about streamlining defense acquisition laws. In the background to this is the fact that the Department of Defense has had to take I believe it is a 30 percent or more real cut in its resources.

The Secretary of Defense has said repeatedly that he cannot guarantee that we can meet the military commitments that Congress has voted for unless the Department of Defense is able radi-

cally to move toward more use of commercial products and reduce the amount of money they pay for what they buy by moving into a more commercial buying environment.

The Section 800 panel recommended to Congress——

Chairman LAFALCE. Who belongs to the Section 800 panel?

Dr. KELMAN. A number of representatives—how are they chosen? This is before I came to town.

Ms. NELSON. They were appointed by the Secretary of Defense.

Chairman LAFALCE. And who was that Secretary of Defense at the time this 800 panel was put into place?

Ms. NELSON. I am getting senile in my old age. The last Republican Secretary.

Dr. KELMAN. Secretary Cheney, I believe.

Ms. NELSON. Thank you, Dr. Kelman.

Ms. DURAN-OWENS. I had some discussions with the socio-economic working group of that panel, or the organization that I was with at that time. The panel was made up of DOD procurement officials, a lot of representatives from the prime contractor community. There was not a representative from the small business community, and most certainly not a representative from the minority business community.

Chairman LAFALCE. So this 800 panel had no small business representation, no minority business representation.

Ms. DURAN-OWENS. Right.

Chairman LAFALCE. And a lot of the recommendations had to do with small business and minority small business.

Ms. DURAN-OWENS. Right. Basically they brought several organizations in from the small and minority business community, brought us into the back room, so to speak, so we could explain to these people who were deciding—that were looking at these regulations and deciding whether to keep them or throw them down the sink.

We had to explain to them what a small business was, what an 8(a) company was, what a minority-owned company was, women-owned company. So, they had no real grasp of the definitions that these laws apply to. But yet they were willing to sit there and wipe all of them out.

Basically that is what happened. That is where a lot of these procurement reform proposals that are coming out now came from that panel 800 report, and have since been regurgitated by the National Performance Review.

Chairman LAFALCE. Any comments? Any questions from the members of the committee?

I thank you very much. I think this hearing has brought out what I thought it would bring out, that we need to proceed a bit more carefully rather than just buy into something that this 800 panel has recommended.

We want to work very closely with the administration, but they should have been in my office talking to me. We want to work with all the other committees, too. They should have been talking with me or my staff directly, not other staffs, but my staff. Maybe this would have been avoided.

Again, I hope we can proceed expeditiously. We will bend over backwards to accommodate the views of all and proceed expedi-

tiously, but protect the rights of the small and minority business community in that process.

Thank you.

[Whereupon, at 12:20 p.m., the subcommittee was adjourned, subject to the call of the chair.]

APPENDIX

OPENING STATEMENT
OF
THE HONORABLE JAY DICKEY
Fourth District - Arkansas

BEFORE THE SMALL BUSINESS COMMITTEE

REGARDING A HEARING ON
"H.R. 4263, THE SMALL BUSINESS AND MINORITY BUSINESS PROCUREMENT OPPORTUNITIES ACT OF 1994"

APRIL 28, 1994

Mr. Chairman, thank you for holding this hearing regarding H.R. 4263, The Small Business and Minority Business Procurement Opportunities Act of 1994. I look forward to the testimony of the witnesses assembled here today.

It is my understanding that two of the many basic problems which disadvantage Small and Minority Businesses dealing with federal procurement are the government agency's notoriously late payments to contractors, and the fact that this tardiness compounds the already prohibitive costs required to bid for and start-up multi-billion dollar contracts. For example, if a large corporation with several large concurrent contracts has trouble achieving prompt payment from a federal agency, resources may be diverted to pay salaries, overhead, and other fixed costs. If that same agency should begin defaulting on a contract obligation with a small business, that business must continuously fight for it's survival. The fact that, to my knowledge, federal procurement procedure does not allow for front loading payments on a contract, severely prohibits the ability for a small business to compete for large scale bids. A large company can transfer assets and resources for immediate staff and fund operations on a new contract from existing business. Small companies need to hire staff, expand facilities, and purchase infrastructure. When added to the fact that it takes 60, 90, 120 days to receive the first payment, it is not difficult to understand why there is so much small and minority business discontent regarding federal procurement.

Apparently, this bill provides access to and schooling for the Federal Acquisition Computer Network, reserves micro-contracts for small businesses, and establishes government set goals for small and disadvantaged business participation. I am looking forward to hearing what the panel thinks about this bill, but from my first impression, it appears that it simply adds another regulatory layer and complication to a complicated business. Maybe if the government paid its bills on time, and provided start-up considerations for small businesses, thereby making federal procurement viable and attractive to small and disadvantaged small businesses, we could actually solve the problem.

Thank you.

COMMITTEE ON SMALL BUSINESS

JOHN J. LaFALCE, CHAIRMAN

HEARING ON SBA AUTHORIZATIONS

The Committee will come to order.

This morning the Committee commences hearings on reauthorization of the Small Business Administration for fiscal year 1995. As has been our practice in the past, I believe the Committee will determine it to be appropriate to not only provide authorization levels for the upcoming fiscal year, 1995, but also for the ensuing two, and possibly even three, fiscal years.

Before we get to the specifics of today's hearing, I want to note for the record that, unfortunately, this will be a somewhat abbreviated hearing. Due to the unfortunate passing of former President Richard M. Nixon, and yesterday's national day of mourning, it was necessary to postpone a hearing on a small business procurement bill I introduced, H.R. 4623, the Small Business and Minority Small Business Procurement Opportunities Act of 1994. Due to prior commitments for the immediate future, the only time to re-schedule that hearing was for later today, at 11:00 a.m. To accommodate that very important subject, we are starting this hearing early, will ask everyone to speak with brevity, and in the interest of time, I will shorten my own remarks.

I must say a few additional words, however.

The legislation under consideration this morning consists of two bills requested by the administration.

The first is to provide partial relief to borrowers under SBA's 503 program which provides long term capital for plant and equipment through the development company program which I authored over a decade ago. Until about 1987, these debentures were sold to the Federal Financing Bank, an arm of the Department of the Treasury, although they are now sold solely to private investors. It is only the former FFB financings which are causing the problem - - - as the result of a provision of the FFB charter legislation which Treasury interprets as mandating what I can best describe as an onerous penalty in the event a borrower elects to prepay the loan.

Proposals to provide relief from these penalties are not new to me or to this Committee. I authored a relief bill which was vetoed by President Reagan in October of 1988. In the next Congress, a similar measure was again passed by the House, but was killed by the Senate due to opposition by the Bush Administration.

I am extremely pleased to receive the Clinton administration's legislative proposal to rectify this penalty problem. I introduced it last Monday by request as H.R. 4298. Based upon prior House action, one might reasonably expect that it would pass quickly; but I want to point out that this may not be the case now. We are in the midst of a major effort to reduce the deficit, and under Federal budget rules this necessitates less spending for all agencies, including SBA. H.R. 4298 will be scored as "costing money" and, in fact, the administration's budget request for next year includes $30 million to permit SBA to pay part of the penalty on behalf of these 503 borrowers.

We will try to provide some relief, but we are short at least $140 million in funding SBA programs and some new Clinton initiatives, such as this legislation.

The second topic for today's hearing is H.R. 4297. The bill would provide specific program levels for the SBA major programs for the next three fiscal years. Those who understand SBA's vital role in providing financing to the small business sector will be extremely pleased by the levels being requested - - - the amount of guarantees would grow from $11 billion this year to almost $23.5 billion in fiscal year 1997.

I am not, of course, endorsing each and every one of these levels, nor all of the program changes being advocated in the bill. I do believe, however, that the Clinton Administration is to be congratulated for its willingness to develop and expand the SBA to meet what they believe to be the needs of the small business community, and I am looking forward to working with the officials of the SBA to accomplish this.

This morning we are pleased to have before us the Honorable Cassandra Pulley, Deputy Administrator of the Small Business Administration. I look forward to hearing from her on behalf of the Administration.

Do other Members have opening remarks?

(Original signature of Member)

103D CONGRESS
2D SESSION

H.R._____

Insert title here ☞ To amend the Small Business Act.

IN THE HOUSE OF REPRESENTATIVES

_____, 19__

Insert sponsor's names here ☞ Mr. LaFalce (by request)

A BILL

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Small Business Administration Amendments of 1994.".

TITLE I

Section 101. Section 7(m)(1)(B) of the Small Business Act is amended by adding the words ", a lender or alliance of lenders" after the word "Administration", and by adding after the word "intermediaries" in clause (i) thereof the following phrase "provided however, that the Administration may make in its sole discretion up to 100 percent deferred participation loans to ten intermediaries which will be located in urban areas and ten intermediaries which will be located in rural areas,".

Section 102. Section 7(m)(7) of the Small Business act is amended by deleting the number "50" from subparagraph (B) thereof, and replacing it with the number "140", and by deleting the period at the end thereof and adding the phrase: "provided that no more than 200 total microloan programs may be funded", and by deleting subparagraph (C) thereof and inserting in lieu

thereof: "(C) In no case shall a State receive more than $5 million to fund all microloan programs conducted in that State."

Section 103. Section 7(m)(3)(C) of the Small Business Act is amended by replacing the number "$1,250,000" with the number "$1,750,000".

Section 104. Section 7(m)(3)(F) of the Small Business Act is amended by adding after the phrase "10 years" in clause (i) the following: "with the first five years of any deferred participation loan being a revolving line of credit on which only monthly payments of interest will be required and the balance amortized over the second five year period, with equal monthly payments of principal and interest"; and by revising clause (ii) to read as follows: "(ii) APPLICABLE INTEREST RATES -- Exception as provided in clause (iii), loans made by the Administration under this subsection to an intermediary shall bear an interest rate equal to the rate of interest on comparable five year obligations of the Untied States Treasury.

TITLE II

Section 201. Section 7(a)(2)(B)(iv) of the Small Business Act is amended to read as follows:

". . . (iv) not more than 90 percent of the financing outstanding at the time of disbursement if such financing is an extension or a revolving line of credit made under

paragraph (14) and not less than 90 percent of the financing outstanding at the time of disbursement if such financing is a loan under paragraph (16)."

Section 202. Section 7(a)(14) of the Small Business Act is amended to read as follows:

"14) (A) The Administration under this subsection may provide extensions, specifically including guarantees of standby letters of credit and revolving lines of credit for export purposes, and financings to enable small business concerns, including small business export trading companies and small business export management companies, to develop foreign markets. A bank or participating lending institution may establish such rate of interest on extensions, revolving lines of credit and financings made under this paragraph as may be legal and reasonable."

Section 203. Section 7(a)(3)(B) of the Small Business Act is amended to read as follows:

". . . if the total amount outstanding and committed (on a deferred basis) solely for the purposes provided in paragraph (16) to the borrower from the Business Guaranteed Loan Financing Account established by this Act would exceed $1,000,000 such amount to be in addition to any financing solely for working capital, supplies, or revolving lines of

credit for export purposes up to a maximum of $750,000; Provided, however that in no event may be aggregate amount outstanding and committed by the Administration under this subsection exceed $1,250,000. . ."

TITLE III

Section 301. Sections 8(b)(2), (3) and (4) of the Small Business Act are amended by inserting the words "and other" after the word "small" wherever it appears.

TITLE IV

Section 401. Section 28[2](g) of the Small Business act is deleted and in its place the following is substituted:

"(g) There is established within the Administration an Office of Women's Business Ownership which shall be responsible for the administration under the supervision by the Administration of all authority conferred by this section. Such Office shall be headed by a director who shall be appointed by the Administrator."

TITLE V

Section 501. Section 8(b)(1)(A) of the Small Business Act is amended by adding at the end thereof the following sentence: "Notwithstanding any other provision of law, the authority provided by this subparagraph shall remain available until expressly repealed."

Section 502. Section 411(a)(3) of the Small Business Investment Act of 1958 is amended by adding the following sentence at the end thereof: "Notwithstanding any other provision of law, the authority granted by this paragraph shall remain available until expressly repealed."

Section 503. Section 5(b)(8) of the Small Business Act is amended by deleting the words "not in excess of six months".

Section 504. The second sentence of Section 732 of Public Law 100-656 is repealed.

Section 505. Section 4(c) of the Small Business Act is amended to read as follows:

"(c)(1) There is hereby established in the Treasury one Loan Liquidation Fund. All repayment of loans and debentures, payments of interest, and other receipts arising out of transactions entered into by the Administration pursuant to Sections 5(e), 5(g), 7(a), 7(b), 7(c)(2), 7(e), 7(h), 7(l), 7(m), and 8(a) of this Act, and Titles III, IV, and V of the Small Business Investment Act of 1958, prior to October 1, 1991, shall be paid into such Loan Fund Liquidating Account. Balances existing in those revolving funds, as in effect immediately prior to the effective date of this paragraph, shall be transferred into such Loan Liquidation Fund. This Loan Liquidation Fund shall have available, without fiscal year limitation, such funds

as are necessary to finance its operational needs.

(2) The Administration shall submit to the Committees on Small Business and Appropriations of the Senate and the House of Representatives, as soon as possible after the beginning of each fiscal year, a full and complete report on the status of the Loan Liquidation Fund established pursuant to paragraph (1)."

Section 506. Section 4(c)(5)(B)(ii) of the Small Business Act is amended to read as follows:

"(ii) The Administration shall pay into the miscellaneous receipts of the Treasury following the close of each fiscal year, the actual interest it collects during that fiscal year on all financings made under the authority of this Act."

Section 507. Section 3(a)(2) of the Small Business Act is amended to read as follows:

". . . (2) In addition to the criteria specified in paragraph (1), the Administrator may specify detailed definitions or standards for example, by number of employees or dollar volume of business, by which a business concern is to be recognized as a small business concern for the purposes of this Act or any other Act. Unless specifically authorized by statute, the Secretary of a department or the head of a Federal agency, other than the Administrator of the Small Business Administration, may not prescribe for the

use of such department or agency a size standard for categorizing a business concern as a small business concern, unless such proposed size standard--

(A) is being proposed after an opportunity for public notice and comment;

(B) provides for determining, over a period of not less than 3 years--

(i) the size of a manufacturing concern as measured by its average employment based upon employment during each of the concern's pay periods for the preceding completed twelve calendar months; or

(ii) the size of a concern providing services on basis of the annual average gross receipts of the concern over a period of not less than three years; and

(C) is approved by the Administrator.

(3) When establishing or approving any size standard pursuant to paragraph (2), the Administrator shall consider variations in economic activity from industry to industry unless the Administrator determines that size standards should not vary in order to meet program needs."

Section 508. Section 5(b) of the Small Business Act is amended by deleting the word "and" at the end of paragraph (10)

thereof, by removing the "." at the end of paragraph (11) thereof and replacing it with ",and" and (b) adding a new paragraph (12) which reads as follows: ". . . (12) to impose reasonable fees to be charged in connection with applications for assistance, and the provision of assistance under this Act and the Small Business Investment Act of 1958 and to retain such fees to offset the costs of administration of such assistance."

Section 509. Section 8(b) of the Small Business Act is amended by deleting the word "and" at the end of paragraph (15), by striking the period at the end of paragraph 8(b)(16) and replacing it with ";and", and by adding a new paragraph 8(b)(17) which reads as follows:

". . .(17) to charge and collect such fees as may be necessary to cover all costs associated with the production and dissemination of compilations of information produced by the Administration under the authority of the Small Business Act and the Small Business Investment Act of 1958, and to retain such fees and utilize such fees to offset the costs of production and dissemination of such compilations of information."

TITLE VI

Section 601. Sections 20(k) through 20(p) of the Small Business Act are repealed and the following is substituted in their place:

"(k) The following program levels are authorized for fiscal year 1995:

(1) For the programs authorized by this Act, the Administration is authorized to make $13,910,000,000 in deferred participation loans and other financings; and of such sum, the Administration is authorized to make $11,500,000,000 in general business loans as provided in section 7(a), $110,000,000 in loans as provided in section 7(m), and $2,300,000,000 in financings as provided in section 7(a)(13) and section 504 of the Small Business Investment Act of 1958.

(2) For the programs authorized by title III of the Small Business Investment Act of 1958, the Administration is authorized to make $23,000,000 in purchases of preferred stock, $275,000,000 in guarantees of debentures of which $65,000,000 is authorized for guarantees of debentures of companies operating pursuant to section 301(d) of such Act, and $550,000,000 in guarantees of participating securities.

(3) For the programs authorized by part B of title IV of the Small Business Investment Act of 1958, the Administration is authorized to enter into guarantees not to exceed $2,000,000,000.

(l) There are authorized to be appropriated to the Administration for fiscal year 1995 such sums as may be necessary to carry out subsection (k), including salaries and expenses of

the Administration.

(m) The following program levels are authorized for fiscal year 1996:

(1) For the programs authorized by this Act, the Administration is authorized to make $17,475,000,000 in deferred participation loans and other financings; and of such sum, the Administration is authorized to make $13,500,000,000 in general business loans as provided in section 7(a), $175,000,000 in loans as provided in section 7(m), and $3,800,000,000 in financings as provided in section 7(a)(13) and section 504 of the Small Business Investment Act of 1958.

(2) For the programs authorized by title III of the Small Business Investment Act of 1958, the Administration is authorized to make $24,000,000 in purchases of preferred stock, $320,000,000 in guarantees of debentures of which $70,000,000 is authorized for guarantees of debentures of companies operating pursuant to section 301(d) of such Act, and $1,100,000,000 in guarantees of participating securities.

(3) For the programs authorized by part B of title IV of the Small Business Investment Act of 1958, the Administration is authorized to enter into guarantees not to exceed $2,000,000,000.

(n) There are authorized to be appropriated to the Administration for fiscal year 1996, such sums as may be necessary to carry out subsection (m), including salaries and expenses of the Administration.

(o) The following program levels are authorized for fiscal year 1997:

(1) For the programs authorized by this Act, the Administration is authorized to make $21,450,000,000 in deferred participation loans and other financings; and of such sum, the Administration is authorized to make $15,500,000,000 in general business loans as provided in section 7(a), $250,000,000 in loans as provided in section 7(m), and $5,700,000,000 in financings as provided in section 7(a)(13) and section 504 of the Small Business Investment Act of 1958.

(2) For the programs authorized by title III of the Small Business Investment Act of 1958, the Administration is authorized to make $25,000,000 in purchases of deferred stock, $385,000,000 in guarantees of debentures of which $75,500,000 is authorized for guarantees of debentures of companies operating pursuant to section 301(d) of such Act, and $1,700,000,000 in guarantees of participating securities.

(3) For the programs authorized by part B of title IV of

the Small Business Investment Act of 1958, the Administration is authorized to enter into guarantees not to exceed $2,000,000,000.

(p) There are authorized to be appropriated to the Administration for fiscal year 1997, such sums as may be necessary to carry out subsection (o), including salaries and expenses of the Administration."

HR 4297

STATEMENT OF NEED AND PURPOSE

Title I

Title I of the proposed legislation addresses several major issues relative to SBA's business loan programs. It makes amendments to existing section 7(m) of the Small Business Act that would allow for greater use of SBA's Micro Loan Program, and it includes a request for authority to guaranty loan pools under the business loan program.

Sections 101-104 of the bill make amendments to SBA's present authority to operate a Micro Loan Program which provides small loans to primarily start-up businesses. Under existing authority for this program, SBA makes direct loans to non-profit intermediaries which in turn make assistance available to small businesses. The proposed change in legislation would permit the SBA to guaranty on a selected basis up to 100% of individual loans made by "participating lenders" to ten urban and ten rural Micro Loan Intermediary lenders participating in SBA's Micro Loan Program. The goal would be to achieve an average SBA share for this program of 90%. This initiative would permit SBA to observe whether such leveraging of the program will stimulate increased activity. If so, the concept may be expended by subsequent legislation to program-wide status. For the purposes of this program "participating lenders" may be any private sector for-profit corporation or non-profit organizations including, but not limited to, regulated lenders, insurance companies, pension

funds, trusts, and foundations or other entities acceptable to SBA.

SBA's current authority would also be modified to encourage participating lenders to form lending alliances, creating loan fund pools for the purpose of making individual loans to intermediary lenders approved under SBA's authority. Such loans whether made by an alliance or an individual lender would be made by participating lenders to intermediary lenders, at a maximum fixed rate of interest not to exceed the rate paid on five-year Treasury note. This interest rate would be reduced or bought down by SBA, consistent with the reduction criteria set forth in the current legislation. Loans made to intermediary lenders would be approved for a maturity not to exceed ten years with the first five years being a revolving line of credit, with monthly payments of interest only. The balance as of the 60th month would be amortized over the second five-year period, with equal monthly payments of principal and interest.

Currently, the Agency is limited by statute to approving a maximum of 110 Micro Lenders. This restriction is limiting the growth of the program even though many sectors of the country are not being adequately served. The proposed legislative change would revise the ceiling on the number of intermediaries approved in the program to 200, and permit SBA's Administrator to authorize new lenders, consistent with the appropriation levels approved by Congress.

The current authority for the Micro Loan program provides a ceiling on the amount of assistance that SBA can approve for Micro Lenders within any given state. This amount is currently $1,250,000. We anticipate that this ceiling will be reached in some states during fiscal year 1995. The proposed legislation would increase this ceiling to $1,750,000. This would allow program growth in those states that have very active intermediaries which would better serve the program's client base.

Finally, current authority for the Micro Loan program limits the number of intermediaries allowed in any given state to four in the first year of operation and two additional intermediaries in each of the remaining years of the program's existence. Since the ceiling has nothing to do with the demand for the program, the proposal would delete specific limitations on the number of intermediaries in any given state. It would impose instead a limitation of $5 million in SBA-backed loans to be made in any given state. Duplication of territories covered in a given state would not be allowed except in rare instances. Those instances would be limited by regulation to situations in which the current intermediary is not covering all the eligible types of businesses in a state or is a specialized lender, such as a specialist in international trade finance.

Title II

Title II of the bill deals with SBA's export loan program.

Section 201 of the bill would amend the Small Business Act to increase maximum guarantee coverage available to a participating lender for an Export Revolving Line of Credit (ERLC) to 90 percent. Presently the percentage of guaranty SBA makes available for such loans varies from a minimum 90 percent based upon the dollar amount of the SBA's participation in the loans. Increasing ERLC coverage to 90 percent in all cases will make the ERLC consistent with Export Import Bank's (Eximbank) Working Capital Guarantee program, as well as the export finance programs of most states. Adoption of this proposal as a means of harmonizing these programs is an important element of the President's National Export Strategy.

Section 201 of the bill would also eliminate the present statutory prohibition on International Trade Loans (ITLs) of $155 thousand or less. The authorizing legislation for the ITL program requires an SBA guarantee on such loans of not less than 85 percent. A separate provision of the authorizing language requires SBA to guarantee not less than 90 percent of loans $155 thousand and under. Consequently, SBA's policy has been to preclude guarantees of ITL loans of $155 thousand and under. As a result, SBA has been precluded from financing exporters who may meet all the ITL program criteria--but for the fact that the loan requested is too small. This amendment would eliminate the inability of SBA to serve the needs of businesses which seek such assistance.

Section 202 of the bill would provide authority for SBA to guarantee standby letters of credit. Standby letters of credit are a common feature of many international sales contracts and are intended to ensure the performance of exporters with whom a foreign buyer may have little or no experience. Operating much like a performance bond in a domestic construction contract, standbys are very prevalent in international transactions. Eximbank and most states permit standby L/C financing under their export financing programs. However, SBA is unable to do so at under its present authority. This amendment would also eliminate the present statutory language which limits export revolving lines of credit made under section 7(a)(14) of the Small Business Act to three year terms.

Section 203 of the bill would eliminate the present $250 thousand cap on working capital loans made under SBA's International Trade Loan (ITL) program. The ITL authorizing statute now allows SBA to provide total export financing of up to $1.25 million--$1 million for financing U.S.-based facilities and equipment, plus up to $250 thousand for working capital. SBA has received numerous requests from lenders to finance working capital loans in excess of the $250 thousand limit but within the combined cap of $1.25 million, for example, $750 thousand for facilities and equipment and $500 thousand in working capital. The change we recommend would result in a much more flexible program which is consistent with the needs of our constituency.

Title III

Title III of the bill deals with SBA's small business procurement program.

Section 301 of the bill would amend the authority for SBA's Procurement Automated Source System (PASS) to provide for the capture of information on other than small businesses. The provisions of the Small Business Act which authorize PASS currently only allow records of small businesses to be maintained in the system. This restriction prohibits PASS from reaching its full potential and should be modified to allow records on firms other than those which are small. This would allow the SBA to capture information on the 4,000 or so large businesses which are available to do business with the Federal government. The inclusion of information on these firms would remove a major obstacle for Federal agencies and prime contractors which would like to use PASS as their primary vendor file. In addition, allowing firms other than those which are small to be listed in PASS would also allow PASS to assume a more significant role in the Government-wide Electronic Commerce and Electronic Data Interchange initiatives.

TITLE IV

Title IV of the bill deals with the SBA's Women's Business Ownership program.

Section 401 of the bill would amend the Small Business Act

to permanently establish within SBA an Office of Women's Business Ownership (OWBO). SBA's Office of Women's Business Ownership has operated exclusively under the authority of Executive Order 12138 since its implementation in 1979. Women business owners (WBOs) are currently the fastest growing segment of our economy and SBA must ensure permanent representation and commitment to the needs and concerns of WBOs. Statutorily authorizing the Office would demonstrate a firm commitment by SBA to permanently include WBOs in not only SBA's programs, but those of other agencies and departments. It would also improve the credibility of OWBO with our constituencies and ensure support of WBOs in future administrations.

Title V

Title V of the bill makes a number of reauthorizations and technical changes in the Small Business Act and Small Business Investment Act.

Section 501 of the bill would provide a permanent authorization of SBA's authority to conduct co-sponsorships with for-profit entities. SBA was given specific temporary authorization to co-sponsor training activities with for-profit entities in 1984. Since that time, the authority has expired and been renewed three times. The most recent renewal, in 1992, was for two years. Permanent authority would permit the private sector co-sponsorship program to operate in a more orderly fashion and facilitate long-range planning that would benefit SBA

clients. Many for-profit entities, as well as large Chambers of Commerce dependent upon for-profit entities, operate with three year planning/funding cycles. Because of the uncertainty of co-sponsorship renewal (the program authority lapsed for seven months in 1991), SBA cannot take advantage of many opportunities to cooperate with private sector entities in order to serve its clients with training events and publications. In addition, off-again/on-again authority erodes the credibility of SBA with the private sector cosponsors upon whom it must depend for program delivery.

Section 502 of the bill would provide a reauthorization of SBA's present Preferred Surety Bond Guarantee Program. The authority for this program expires on September 30, 1994. Under the Preferred Surety Bond Guarantee Program, SBA is able to delegate responsibility for program administration to selected sureties and, therefore is able to conserve administrative resources. SBA has proposed to use this authority exclusively for the continued operation of the program and, therefore is proposing to repeal the statutory sunset provision.

Section 503 of the bill eliminates a technical restriction on the employment of temporary employees in conjunction with SBA's disaster assistance program.

General Accounting Office Report (Number B-242801)

recommended as a "Matter of Congressional Consideration", the following:

> "If SBA is to optimize its use of temporary employees assisting victims of major disasters outside the continental United States, the Congress may wish to allow the SBA Administrator the discretion to waive on a case-by-case basis, the provision that limits to 6 months the length of time per diem can be paid to a temporary employee for any one disaster. Such waiver authority could enhance the federal government's efforts to assist disaster victims by permitting SBA to keep experienced employees at a disaster location when there is an overriding need to do so."

Section 5(b)(8) of the Small Business Act currently allows SBA to pay the transportation expenses and per diem in lieu of subsistence expenses, in accordance with the Travel Expense Act of 1949, for travel of any person employed by the Administration to render temporary services not in excess of six months in connection with any disaster referred to in section 7(b) of the Small Business Act from place of appointment to, and while at, the disaster area and any other temporary posts of duty and return upon completion of the assignment. The GAO report found that, in order to comply with this section, "SBA had to release or transfer some temporary employees to other disaster locations when work for which they were qualified remained to be done at their current location".

We agree with the GAO recommendation. However, we feel the need is important in all mega-disasters, such as the Northridge Earthquake and Hurricanes Hugo, Andrew and Iniki, whether within or outside of CONUS. This legislative proposal will give the SBA the ability to employ temporary personnel without the current statutory ban against temporary employees collecting per diem in excess of six months for any one disaster. The ban is a particular problem in mega-disasters and results in decreased efficiency and reduced customer services.

Section 504 of the bill eliminates a restriction on SBA's changing size standards for four industries which was put into effect to support a statutorily established small business competitiveness demonstration program. Section 732 of P.L. 100-656 requires that the numerical size standards pertaining to the four Designated Industry Groups (DIGs) that were in effect on September 30, 1988, remain in effect for the duration of the four-year demonstration program. P.L. 102-366 extended the Competitiveness Demonstration Program for an additional four years. Because the effect of these provisions is to require the size standards that were in effect to remain in effect, the size standards cannot be adjusted to reflect the current status of each affected industry, the economy, or Federal procurement practices, which are normal causes for re-examination of size standards in the administrative process. The suggested legislative change will remove the size standard "freeze" so the

size standards may be adjusted if the industry warrants a change.

Section 505 of the bill would consolidate SBA's several liquidating funds into a single account. Under current law, SBA maintains separate accounting and reporting for a Business Loan and Investment Fund (BLIF), a Disaster Loan Fund (DLF), and a Pollution Control Equipment Contract Guarantees Fund (PCECGF). Due to the enactment of the Federal Credit Reform Act and the discontinuation of SBA's pollution control bond guarantee program, the SBA is not authorized to enter into any new obligations for loans or guarantees under these funds. All new loan and guaranty activity is now authorized, appropriated for, and conducted with funds made available under SBA's Business Loans Program and Financing funds and the Disaster Loans Program and Financing funds.

The BLIF, DLF, and PCECGF now exist only to liquidate obligations entered into prior to the enactment of Federal Credit Reform and the discontinuance of the pollution control contract guarantees program. Also, the BLIF and DLF are now referred as the Business Loan Fund Liquidating Account and Disaster Loan Fund Liquidating Account under the requirements of the Federal Credit Reform Act.

Due to the continued authorization of these three separate funds in our statute, the SBA is precluded from combining them

for accounting and reporting purposes. This creates an unnecessary administrative burden on the SBA. For the above reasons, the proposal would combine the three funds, BLIF, DLF, and PCECGF into a single SBA liquidating fund.

Section 506 of the bill allow the SBA to compute interest expense it pays to the Treasury from our business loan and investment fund (BLIF) and disaster loan fund (DLF) as a pass-through of actual interest collected. Prior to enactment of the Federal Credit Reform Act, SBA utilized borrowing authority to finance its loan program obligations under the BLIF and DLF funds. Under current law, SBA must compute an annual interest expense payment to the Department of the Treasury for the BLIF and DLF funds based on a complex formula derived from a combination of factors dealing with the origination of the appropriated funds, the outstanding balance of the portfolio, and the current Treasury rate of interest. The process of computing the annual interest expense for these two funds is cumbersome, complex, and time-consuming. The process creates an unnecessary administrative burden on the SBA. In addition, the accuracy of such computation is suspect due to the complexity of the formula process. As a normal function of its loan programs, when SBA collects interest from its loan borrowers these collections are used to offset the interest expense that is calculated and paid by SBA to the Treasury. For most past years, the amount collected has equalled or exceeded the computed interest expense

due the Treasury by the SBA. To ease the administrative burden of this process and to simplify reporting requirements, this amendment would permit SBA to pass-through the actual interest collected annually to the Treasury to meet its requirement for the payment of interest expense.

Section 507 of the bill would make a number of clarifications to SBA's authority to promulgate size regulations. These clarifications are designed to:

1. Make a technical correction to the parenthetical material in the third line of new subsection 3(a)(2) of the Small Business Act (the Act), as amended by § 222 of Pub. L. 102-366.

The relevant text of subsection 3(a)(2) of the Act currently provides only for the use of number of employees or dollar volume of business as exclusive measures of size. To accommodate the use of net worth and net income as measures, the words "for example" are suggested to be inserted in the operative provision so that the possibility of other measures is available.

2. Make a technical correction to subsection 3(a)(2) of the Act, as amended by § 222 of Pub. L. 102-366. In the present subsection 3(a)(2), the phrase "head of a federal agency" could be interpreted to include the Administrator of SBA thereby having the unintended effect of inhibiting SBA's ability to set size standards.

This is proposed to be corrected by adding the words "other than the Small Business Administration" so that the whole phrase

reads as follows: "the head of a federal agency other than the Small Business Administration".

3. Make an amendment to subsection 3(a)(2)(B) of the Act, as amended by § 222 of Pub. L. 102-366 which presently begins with "provides for determining, over a period of not less than 3 years -".

This language can be read to be applicable to size determinations based on number of employees as well as gross receipts. This conflicts with present size regulations governing size determinations (13 CFR § 121.407(a)) which count employees over only one year. All employee based size standards for SBA programs are based on an average of pay periods over the previously completed 12 calendar months rather than a three-year time period.

Sections 508 and 509 of the bill would eliminate the effect of language in SBA's present appropriations act which prohibits the SBA from imposing new or increased guaranty fees, management assistance or user fees. Under its current appropriations statute, the SBA is prohibited from imposing any new or increased loan guaranty fees or debenture guaranty fees or any new or increased user fee or fee for provision of management assistance, except as otherwise provided for in that Act. This prohibition on assessment and collection of fees prevents the SBA from developing alternatives to generating revenues to recover costs of operations. Therefore, the level of provision of programs or

activities must be tied directly to the provision of appropriations to cover the costs of such operations. This is a disincentive for program officials to expand their programs through the use of alternative sources of funds. Also, it precludes the SBA from recovering the costs of programs from the recipients of the assistance.

In many cases, the goods and services that the SBA provides are extremely marketable and are comparable to private-sector programs. The general public is accustomed to paying for these goods and services from these private-sector sources. However, the SBA is currently prohibited from charging a fee for our goods and services.

In addition, the annual appropriations process for the SBA requires us to reduce whenever possible the costs of operations without decreasing the provision of goods and services. The imposition of new fees or the increase of existing fees is a viable method of generating revenues to offset the appropriations requirements. The President's FY 1995 budget request for the SBA assumes the generation of $26 million in revenues through the imposition of new user fees. Overriding the referenced statutory prohibition with authority to charge the necessary fees provided by section 508 of the bill would allow SBA to generate these requested revenues.

Section 509 of the bill would provide SBA the authority to sell the publications and products it develops as management and technical guides for small businesses. Because of the lack of such specific authority, funding of SBA's business development publications and products is currently dependent upon voluntary donations by the small businesses who receive them. Approximately one-third of the orders for these products are unaccompanied by donations, in which case the products must be provided free of charge. Authority for SBA to sell publications would enable SBA to operate it's program on a business-like self-sufficient basis (with normal cash-flow and needs projections). Effectively, such authority would allow our constituency to bear the costs of producing these products rather than SBA's appropriations, and would eliminate the present circumstance of some of our constituency who pay voluntarily subsidizing the remainder who do not.

Title VI

Title VI of the bill deals with budget authorization to support the financial assistance programs of the SBA.

Section 601 would set budget authorization levels for SBA's financial assistance programs. These program levels are based on our goal to fully support the President's initiative of alleviating the credit crunch for small business owners. SBA's role in meeting this initiative is particularly critical because SBA's loans serve businesses normally excluded from traditional

financing sources. Because demand for SBA loan programs has been increasing each year, we must have adequate authorization to support continued growth in our existing programs.

In addition, we are implementing a number of new initiatives designed to make our loans more accessible to small business owners, particularly minorities and women. The new initiatives include the GreenLine program which provides a line of credit financing; a low documentation loan program, "Low Doc," which reduces the documentation required on loan requests up to $100,000; the Women's Pre-Qualification Pilot Loan Program which will allow women-owned businesses to bring their loan applications to the SBA for review prior to submission to a lender; and the Small Loan Express program which will allow lenders to use their own forms for loans to be guaranteed by the SBA. Interest in these new programs is very high, and adequate funding must be available to support them.

SMALL BUSINESS ADMINISTRATION
PROPOSED AUTHORIZATION LEVELS

	AUTHORIZED		PROJECTIONS					
	FY 1994		FY 1995		FY 1996		FY 1997	
	SBA Share	Estimated Gross	SBA Share	Estimated Gross	SBA Share	Estimated Gross	SBA Share	Estimated Gross
Direct & Immediate Participation Loans	$143,000,000	$143,000,000	$0	$0	$0	$0	$0	$0
Handicapped	22,000,000	22,000,000	0	0	0	0	0	0
EOL	27,000,000	27,000,000	0	0	0	0	0	0
8(a)	12,000,000	12,000,000	0	0	0	0	0	0
Veterans	22,000,000	22,000,000	0	0	0	0	0	0
MICRO	60,000,000	60,000,000	0	0	0	0	0	0
Deferred Participation & Other Financings	$8,700,000,000	$10,440,000,000	$11,625,000,000	$13,910,000,000	$14,710,000,000	$17,475,000,000	$19,825,000,000	$21,460,000,000
General Business	7,200,000,000	8,890,000,000	9,315,000,000	11,500,000,000	10,835,000,000	13,500,000,000	14,175,000,000	16,500,000,000
Development Companies	1,500,000,000	1,550,000,000	2,200,000,000	2,300,000,000	3,600,000,000	3,800,000,000	5,400,000,000	5,700,000,000
Micro Gty	0	0	110,000,000	110,000,000	175,000,000	175,000,000	250,000,000	250,000,000
Small Business Investment Companies 1/	$504,000,000	$504,000,000	$848,000,000	$848,000,000	$1,444,000,000	$1,444,000,000	$2,110,000,000	$2,110,000,000
SBIC	190,000,000	190,000,000	210,000,000	210,000,000	250,000,000	250,000,000	310,000,000	310,000,000
MESBIC Gty	42,000,000	42,000,000	65,000,000	65,000,000	70,000,000	70,000,000	75,000,000	75,000,000
MESBIC Dir	22,000,000	22,000,000	23,000,000	23,000,000	24,000,000	24,000,000	26,000,000	26,000,000
Participating Securities	250,000,000	250,000,000	550,000,000	550,000,000	1,100,000,000	1,100,000,000	1,700,000,000	1,700,000,000
Surety Bond	$2,084,000,000	$2,368,200,000	$1,760,000,000	$2,000,000,000	$1,760,000,000	$2,000,000,000	$1,780,000,000	$2,000,000,000

1/ Although this program has been authorized through FY 1997 under P.L. 102-366, the approved levels do not adequately reflect anticipated demand, and therefore, require a revision.

(Original signature of Member)

103D CONGRESS
2D SESSION

H.R.

Insert title here

To amend the Small Business Investment Act of 1958 to permit prepayment of debentures issued by State and local development companies.

IN THE HOUSE OF REPRESENTATIVES

_____, 19__

Insert sponsor's names here

Mr. LaFalce (by request)

A BILL

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Section 2. Prepayment of Development Company Debentures.

(a) In General - Title V of the Small Business Investment Act of 1958 (15 U.S.C. 695, et seq.), is amended by adding at the end the following new section:

"Sec. 507. Prepayment of Development Company Debentures.

"(a) In General. (1) If the requirements of subsection (b) are met and subject to the availability of appropriations, the issuer of a debenture purchased by the Federal Financing Bank and guaranteed by the Administration under section 503 may, at the election of the borrower whose loan secures such debenture and with the approval of the Administration, prepay such debenture by paying to the Federal Financing Bank, the amount that is equal to the sum of the unpaid principal balance due on the debenture on the date of the prepayment (plus accrued interest at the coupon rate on the debenture) and the amount of the repurchase premium described in paragraph (2)(A). The Administration shall pay to the Federal

Financing Bank the difference between the repurchase premium paid by the issuer of the debenture under this subsection and the repurchase premium that the Federal Financing Bank would otherwise have received.

"(2)(A) The amount of the repurchase premium described in this paragraph is the product of --

(i) the unpaid principal balance due on the debenture on the date of prepayment;

(ii) the interest rate of the debenture; and

(iii) the factor 'P', as determined under subparagraph (B).

"(B) For purposes of subparagraph (A)(iii), the factor 'P' means the applicable percent determined in accordance with the following table:

Year in which prepayment of debenture is made (from date of original issuance)	Applicable percent			
	10-year term loan	15-year term loan	20-year term loan	25-year term loan
1	1.00	1.00	1.00	1.00
2	.80	.85	.90	.92
3	.60	.70	.80	.84
4	.40	.55	.70	.76
5	.20	.40	.60	.68
6	0	.25	.50	.60
7	0	.10	.40	.52
8	0	0	.30	.44
9	0	0	.20	.36
10	0	0	.10	.28
11	0	0	0	.20
12	0	0	0	.12
13	0	0	0	.04
14 through 25	0	0	0	0

"(b) Requirements. The requirements of this subsection are met if --

"(1) the debenture is outstanding and neither the loan that secures the debenture nor the debenture is in default on the date the prepayment is made;

"(2) state or personal funds, which may include refinancing under the programs authorized by sections 504 and 505 of this Act are used to prepay the debenture; and

"(3) the issuer certifies that the benefits, net of fees and expenses authorized herein, associated with prepayment of the debenture are entirely passed through to the borrower.

"(c) No fees or penalties other than those specified in this section may be imposed as a condition of such prepayment against the issuer or the borrower, or the Administration or any fund or account administered by the Administration, except as provided in this Act.

"(d) The refinancing of debentures authorized by paragraph (b)(2) of this section under section 504 of this Act shall be limited to only such amounts as are needed to prepay existing debentures and shall be subject to all of the other provisions of sections 504 and 505 of this Act and the rules and regulations of the Administration promulgated thereunder, including, but not limited to, rules and regulations governing payment of authorized expenses and commissions, fees and discounts to brokers and dealers in trust certificates issued pursuant to section 505; provided, however, that no applicant for refinancing under

section 504 of this Act need demonstrate that a requisite number of jobs will be created with the proceeds of such refinancing."

Section 3. (a) The provisions of this Act are exercisable at the option of the borrower.

(b) Any new credit or spending authority provided for in this Act is subject to amounts provided in advance in appropriations Acts.

(c) There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act.

(d) Within 30 days of the effective date of this Act, the Administration shall promulgate such regulations as are necessary, including establishing an order of priority to accomplish the provisions of this Act.

(e) Subsection 504(b) of this Act is hereby repealed, and subsection 504(a) is renumbered as section 504, and paragraphs (1) through (3) of subsection 504(a) are renumbered as subsections 504(a) through (c).

H.R. 4298

STATEMENT OF NEED AND PURPOSE

503 PREPAYMENT LEGISLATION

Background

The 503 loan program began in 1981. It provided long-term fixed rate financing for businesses needing to acquire industrial or commercial buildings, and to buy machinery and equipment. There are two loans in each project. A bank or other private sector lender provides at least 50 percent of project cost and gets a first lien position on all collateral. An SBA-guaranteed debenture funded through the Federal Financing Bank (FFB) is used to fund a 503 loan which for 40 percent of the project cost and is collateralized by a second lien position. The small business finances the remaining 10 percent independently.

About $992 million was funded through the 503 program. It was replaced in 1987 by the 504 program which substituted the private markets for the FFB as the funding mechanism for SBA-guaranteed debentures. About 3,600 503 loans remain in existence with interest rates as high as 15.7 percent.

The 503 Prepayment Penalty

From the borrower's perspective, there was only one major problem with the 503 program: the prepayment penalty. In all other respects, the program was very successful. The FFB allows

borrowers to prepay only if they pay an amount that can be invested to produce a semi-annual payment stream identical to that of the original debenture.

Because market interest rates have fallen considerably since 503 loans were made, the prepayment penalties today are as high as 64 percent of the remaining loan balances. The lower rates go, the higher the penalty. This approach insulates the U.S. Treasury from exposure to interest rate risk. It makes it extremely difficult for most of these small business owners to refinance their loans at today's low rates. They cannot expand their businesses and create new jobs. Either of these acts requires that the 503 loan be paid off. They cannot sell their businesses or retire, since buyers would not want to take on the 503 loans which carry high interest rates. 503 loans were intended to help small businesses be more competitive, but because of the unresolved prepayment issue, they are now having the opposite effect.

The Administration believes that it is imperative to remedy the problem, as a matter of both justice and economic policy. The Administration bill would authorize the replacement of the 503 prepayment penalty with the penalty used in conjunction with the 504 program, which is widely accepted by small businesses.

The 504 penalty is a market-type penalty that has been used

in the 504 loan program since 1987. It is a penalty that starts at one year's interest if the loan is prepaid in the first year, followed by a straight line reduction to zero at the midpoint of the loan's maturity. For example on a 20-year loan, the penalty would be one year's interest if the loan prepays in the first year, half of one year's interest if it prepays in the fifth year, and zero if it prepays after the tenth year.

If this proposal were enacted, a borrower wishing to prepay could do so by paying principal and interest on a 503 loan plus the 504 penalty rather than the 503 penalty. Some sources that a borrower could use to pay off the 503 loan include conventional financing, proceeds from the sale of the business, borrower savings, etc. Under existing law, a new 504 loan cannot be used for refinancing. The bill amends the Small Business Investment Act of 1958, to permit a 504 loan to be used to refinance a 503 loan. The change would be limited to permit 504 financings only in amounts sufficient to cover the cost of refinancing existent 503 obligations and the new prepayment penalty. These would be processed as though they were new loans: same processing, fees, and credit quality standards. Only the 504 job creation requirements would be waived, since the primary purpose of this legislative change is to facilitate the refinancing of the 503 loans. Although we expect that most refinancings would create new jobs, we are not mandating the 504 job creation and retention requirement, since the original 503 loan has already met the job

The Administration has requested $30 million in its FY 1995 budget to fund this solution.

SBA will make the new prepayment opportunity available first to those borrowers that are paying the highest interest rates on their 503 loans. SBA will notify all 503 borrowers with interest rates of 12 percent or higher that for 90 days they will have the first opportunity to avail themselves of the lower penalty. About 28 percent of the loan dollars are in this category. After 90 days, the opportunity to prepay at lower penalty will be opened successively to borrowers paying interest rates below 12 percent, until either all borrowers are covered or the $30 million has been exhausted.

This proposal, if enacted, would eliminate the statutory prohibition against Treasury providing financing under the 504 program. This proposal would not mandate that Treasury provide the financing, but would give the Administration the flexibility to decide which is the best source of financing to use for the program.

STATEMENT OF
U.S. REP. JAN MEYERS
COMMITTEE ON SMALL BUSINESS
HEARING ON H.R. 4623
APRIL 28, 1994

Thank you, Mr. Chairman. I am glad we are having this hearing to discuss the provisions of H.R. 4623. The Chairman's legislation contains measures to ensure that small businesses are a vital part of the procurement process.

In particular, H.R. 4623 directs the Administrator to coordinate efforts to allow small businesses to access contract announcements, and submit bids, by computer. This change is important because it utilizes today's technology to greatly improve notice to small businesses about federal contracting opportunities.

Another key improvement in procurement law proposed in H.R. 4623 is the increase in the small business "reserve" from $25,000 to $100,000. Under a reserve, small contracts, in which two or more small businesses submit responsible bids, will be awarded to a competing small business.

As the proposals to reform the federal procurement process have moved forward, it has become clear that we must strike a balance between the desire to streamline government procurement, to make it more business-like, and the reality that the government is not a business. Protecting taxpayer's dollars is essential, but equally important is ensuring access to government contracts to the most innovative and efficient segment of our economy - small business. We must take care not to destroy the small business protections we have built into the system.

As we hear testimony today on H.R. 4623, I hope we will

discuss the promotion of opportunity for small business openly and honestly. I am not convinced that many agencies do their best in this arena, and that is why this committee has acted to place protections in the law. I also hope that we can discuss the procurement barrier that clearly exists for an all-too-often neglected sector of the small business community, women-owned businesses.

H.R. 4623 proposes implementation of a government-wide goal of five percent of all contracting dollars for minority owned business - a goal to be reached, if necessary, by the use of set-asides and preferences.

Women-owned businesses now receive less than two percent of federal prime contracting dollars and barely more than two percent of subcontracts, yet they own approximately one-third of all small businesses. It seems amazing that we have so long neglected the plight of women-owned business who have been denied the opportunity to provide goods and services to the government their tax dollars help fund. To continue to ignore the inequity in the system for this segment of the small business community is short-sighted, and I believe it reflects poorly upon us all.

Mr. Chairman, I thank you for your efforts on this bill, and your desire to ensure opportunity for all small businesses. You are to be commended for your efforts to make sure that the Committee plays an active role in shaping such important legislation as federal procurement reform, since government contracts are an important market for many small businesses. I look forward to hearing from the witnesses and I thank them for appearing before us today.

OPENING STATEMENT OF
CONGRESSMAN BILL ZELIFF (R-NH)
Small Business Committee
April 28, 1994

Mr. Chairman, thank you for calling today's hearing on H.R. 4263, the "Small Business and Minority Small Business Procurement Opportunities Act of 1994."

I am very glad that the Small Business Committee is taking this opportunity to ensure federal procurement reform considers the importance of small business. As we work to streamline procurement in every agency, we must not forget that many small businesses are ready and eager to do business with the government -- if we don't shut them out of the process.

I must say, however, that the minority set-aside language in H.R. 4263, and in current regulations, greatly concerns me. I certainly agree that minority-owned businesses should be encouraged to participate in federal procurement. Moreover, the federal government should certainly not discriminate on the basis of race, color, religion, etc when awarding contracts.

But set-asides, even when expressed as a "target" or "goal," is nothing more than a quota. If the target is not reached for whatever reason, you can be sure that the laws will be changed to ensure the target is reached. That is a quota by another name.

Mr. Chairman, I support free competition for government contracts. I support promoting small business in this procurement, and I applaud many of the reforms being proposed to accomplish that goal. What I cannot support are set-asides based on race or other criteria.

I look forward to hearing the testimony today.

Attachments to Statement of
Small Business Working Group
on Procurement Reform

June 21, 1993

The Honorable Alan V. Burman
Administrator
Office of Federal Procurement Policy
Office of Management and Budget
Room 350, Old Executive Office Building
Washington, D.C. 20500

Dear Dr. Burman:

The undersigned organizations request that, under the authority granted the Administrator of the Office of Federal Procurement Policy in Section 6 of the Office of Federal Procurement Policy Act, you initiate action to amend the Federal Acquisition Regulation Part 13, Small Purchase and Other Simplified Purchase Procedures, to bring it into compliance with existing law.

Section 18 of the OFPP Act (and the parallel provision in Section 8(e) of the Small Business Act) states:

> "(B) an executive agency intending to solicit bids or proposals for a contract for property or services shall post, for a period of not less than ten days, in a public place at the contracting office issuing the solicitation a notice of solicitation described in subsection (f)--
>
> "(i) in the case of an executive agency other than the Department of Defense, if a contract is for a price expected to exceed $10,000, but not to exceed the small purchase threshold; and
>
> "(ii) in the case of the Department of Defense, if the contract is for a price expected to exceed $5,000, but not to exceed the small purchase threshold."

The OFPP Act further provides that these local postings provide essentially the same information as the notices that appear in the *Commerce Business Daily* for contracting opportunities above the small purchase threshold.

Unfortunately, the provisions in FAR Part 13 are not in compliance with the OFPP Act. FAR 13(b) states that no posting is required if the small purchase buyer chooses to solicit offers orally (i.e., telephonically). In addition, it states: "Generally, quotations shall be solicited orally . . . ." Not surprisingly, this admonition of the FAR generally is followed by those conducting small purchases.

As a result of this provision, small businesses all too frequently are unaware of small purchase opportunities. Thus, we strongly recommend that FAR Part 13 be amended to require that local postings be required on all procurements between $5,000 and $25,000 for civilian agencies and between $10,000 and $25,000 for DOD, as required by Section 18 of the OFPP Act.

In addition, FAR 13(b)(5) states:

> "Generally, solicitation of at least three sources may be considered to promote competition to the maximum extent practicable."

We have had reports of contracting officers refusing to accept quotations from sources not solicited by federal buyers. Thus, offerors Nos. 4, 5 and 6 often have to fight their way into the process.

We believe this FAR provision is in direct contravention of the Federal Property and Administrative Services Act of 1949 (and Title 10). Section 303(g)(4) of that Act (and 10 U.S.C. 2304) states:

> "In using small purchase procedures, an executive agency shall promote competition to the maximum extent practicable."

Further, Section 309(b) of that Act (and 10 U.S.C. 2302(2)(3)) states:

> "The term 'competitive procedures' means procedures under which an executive agency enters into a contract pursuant to full and open competition. Such term also includes:
>
> . . .
>
> "(4) procurements conducted in furtherance of Section 15 of the Small Business Act (15 U.S.C. 644) as long as all responsible business concerns that are entitled to submit offers for such procurements are permitted to compete; . . ."

Thus, we further recommend that FAR Part 13 be amended to specifically state that a buying activity must consider offers from all responsible small business concerns.

Your office, as well as others in the Executive Branch, have requested that Congress raise the existing small purchase threshold of $25,000 to $100,000. We in the small business community strongly believe that the 1984 procedures, which were enacted when the small purchase threshold was last raised, should be fully and properly implemented before Congress seriously considers further legislation on this issue. Thus, we urge you to act as expeditiously as possible.

If you need further information about this request, please contact Colette Nelson at 703-684-3450

We look forward to your response to our letter as well as your prompt action to amend the FAR.

Sincerely yours,

American Gear Manufacturers Association
Independent Defense Contractors Association
Latin American Management Association
Minority Business Legal Defense and Education Fund
National Association of Credit Management
National Association of Minority Business
National Association of Women Business Owners
National Center for American Indian Enterprise Development
National Federation of Independent Business
National Small Business United
Small Business Legislative Council
U.S. Chamber of Commerce

RECEIVED NOV 1 8 1993

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

OFFICE OF FEDERAL
PROCUREMENT POLICY

November 17, 1993

Ms. Colette Nelson
Chairman, Procurement Committee
Small Business Legislative Council
1004 Duke Street
Alexandria, VA 22314

Dear Ms. Nelson:

This letter is in reply to concerns raised by the Small Business Legislative Council and other representatives of the small business community in correspondence to the Office of Federal Procurement Policy (OFPP) regarding Part 13 of the Federal Acquisition Regulation (FAR). Part 13 of the FAR deals with small purchase and other simplified purchase procedures.

The letter recommends that FAR Part 13 be amended to require local posting on all procurements -- including those where offers are solicited orally -- between $10,000 and $25,000 for civilian agencies and between $5,000 and $25,000 for the Defense Department. It further recommends that the FAR be amended to specifically require that a buying activity consider offers from all responsible small business concerns. The letter requests that OFPP initiate action on FAR amendments pursuant to Section 6 of the Office of Federal Procurement Policy Act (OFPP Act), 41 U.S.C. § 405.

Before taking action under Section 6 of the OFPP Act, I am asking for comment on these issues by the Director of Defense Procurement, the Associate Administrator for Acquisition Policy at the General Services Administration and the Associate Administrator for Procurement at the National Aeronautics and Space Administration. A copy of my letter to these individuals is enclosed.

As you are aware, we are presently working with Congress to bring about important procurement reforms to improve the way the Government buys goods and services. An important focus of our efforts is on making the Federal contracting process more accessible to small businesses and in encouraging greater small business participation by reducing the burden imposed on this community. As I stated in an August 3, 1993 hearing before the Minority Enterprise, Finance, and Urban Development Subcommittee of the House Committee on Small Business, this Administration views small and small disadvantaged business concerns "as fundamental and critical sources of supply for the Federal Government and their value cannot be overstated."

One procurement reform initiative already underway within the Executive branch which we believe will be especially beneficial for small businesses -- and which was a key recommendation of the Vice President's National Performance Review -- involves increasing the Government's reliance on electronic commerce. On October 26, 1993, the President issued a memorandum requiring the Government to implement electronic commerce for appropriate Federal purchases as quickly as possible. An explicit objective of this initiative is to provide businesses, including small, small disadvantaged, and women-owned businesses, with greater access to Federal procurement opportunities. We believe that the steps called for in the President's memorandum should help to eliminate the problems presently experienced by these concerns in the current paper-based process.

We appreciate the comments of the small business community and its interest and participation in improving Government contracting. My office remains committed to improving small business access to the Federal procurement system and to ensuring that procurement policy and regulation are consistent with this important goal.

Sincerely,

Allan V. Burman

Allan V. Burman
Administrator

Enclosure

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

OFFICE OF FEDERAL
PROCUREMENT POLICY

November 17, 1993

Mrs. Eleanor R. Spector
Director
Defense Procurement
The Pentagon, Room 3E-144
Washington, DC 20301-3000

Dear Eleanor:

My office has received a letter from the Small Business Legislative Council and other representatives of the small business community. It requests that I initiate action to amend portions of Part 13 of the Federal Acquisition Regulation (FAR). Copies of this letter and my response thereto are enclosed.

The letter recommends that the FAR be amended to require local posting on all procurements -- including those where offers are solicited orally -- between $10,000 and $25,000 for civilian agencies and between $5,000 and $25,000 for the Defense Department. It further recommends that the FAR be amended to specifically require that a buying activity consider offers from all responsible small business concerns.

Prior to taking action under Section 6 of the Office of Federal Procurement Policy Act, 41 U.S.C. § 405, I am asking that you promptly review the issues presented in this letter and provide me with any comments you may have. In this regard, your review should consider not only FAR Part 13, but also any provisions of FAR Part 5 germane to the comments in the letter (namely FAR 5.101(a)(2)(ii) which provides that contracting officers need not comply with the posting requirements when oral solicitations are used). Careful review of this matter is particularly important in light of the ongoing procurement reform efforts, a key aspect of which is to improve small business access to Federal contracting opportunities.

Sincerely,

Allan V. Burman

Allan V. Burman
Administrator

Enclosures

Identical Letter Sent to Mr. Richard H. Hopf, III,
Ms. Deidre A. Lee

MBELDEF

Minority Business Enterprise Legal Defense and Education Fund, Inc.

Parren J. Mitchell
Founder and Chairman

Anthony W. Robinson
President

STATEMENT OF

PARREN J. MITCHELL
CHAIRMAN
MINORITY BUSINESS ENTERPRISE LEGAL DEFENSE
AND EDUCATION FUND, INC. ("MBELDEF")

BEFORE THE

HOUSE COMMITTEE ON SMALL BUSINESS
UNITED STATES HOUSE OF REPRESENTATIVES

THURSDAY, APRIL 28, 1994

GOOD MORNING , CHAIRMAN LAFALCE AND MEMBERS OF THE COMMITTEE. I AM PLEASED AND DELIGHTED THAT YOU HAVE AFFORDED ME THE OPPORTUNITY TO COMMENT ON H.R. 4263 , "THE SMALL BUSINESS AND MINORITY SMALL BUSINESS PROCUREMENT OPPORTUNITIES ACT OF 1994" AND THIS MOST IMPORTANT ISSUE OF PROCUREMENT REFORM.

I CONGRATULATE ALL OF YOU FOR THE CAREFUL ATTENTION BEING GIVEN TO A MATTER OF SERIOUS IMPORT TO US ALL. PROCUREMENT, AFTER ALL, IS WHERE THE RUBBER MEETS THE ROAD. IT IS PROCUREMENT WHERE HUGE SUMS OF TAXPAYER DOLLARS ARE TRANSFERRED TO CORPORATE HANDS UNDER A SCHEME WHICH INVOLVES NO LESS OF A COMMITMENT TO THE PUBLIC INTEREST THAN THE PAYMENT OF ENTITLEMENT FUNDS. THE INTEGRITY OF THE FEDERAL ACQUISITION SYSTEM SHOULD BE HELD SACROSANCT AND INVIOLABLE BECAUSE THE TAXPAYERS DEMAND ACCOUNTABILITY FOR THE VAST SUMS PAID INTO THE FEDERAL GOVERNMENT'S COFFERS.

EACH FISCAL YEAR, THE PRESIDENT AND THE CONGRESS DECIDE TO SPEND THE TAXPAYERS' MONEY TO ADVANCE THE SOCIETY AS A WHOLE, AND TO PROVIDE ECONOMIC AND SOCIAL BENEFITS TO BE DISTRIBUTED IN THE FORM OF CASH AND SERVICES. THIS IS DONE BECAUSE THERE IS AN INHERENT OBLIGATION TO PROMOTE THE GENERAL WELFARE, INCLUDING NATIONAL SECURITY. THE PROCUREMENT OF GOODS AND SERVICES IS PART OF THE METHODOLOGY USED TO ACCOMPLISH THIS OBJECTIVE. THERE IS A TENET OF THIS SOCIAL CONTRACT THAT BINDS THE PRESIDENT AND THE CONGRESS TO ACT IN THE PUBLIC INTEREST.

WHEN WE REVIEWED THE WORK OF THE SECTION 800 PANEL, WE WERE ALARMED BY THE SUBTLE, AND OFTEN NOT SO SUBTLE, SUGGESTION THAT LAWS WHICH EVOLVED AS A PLETHORA OF SAFEGUARDS TO PROTECT THE PUBLIC FROM THE TEMPTATIONS OF PRIVATE ABUSE OF THE PUBLIC TRUST AND AGAINST INCURSIONS OF PRIVATE INTEREST UPON PUBLIC INTEREST, WERE UNNECESSARY. ESTABLISHING LAWS AND REGULATIONS TO PROTECT THE PUBLIC INTEREST ARE NOT ACTIONS TAKEN IN A VACUUM BUT A REFLECTION OF CONGRESS' WILL TO MAKE THE PUBLIC INTEREST PARAMOUNT.

THE RECORD CLEARLY INDICATES THAT LARGE BUSINESS INTERESTS DOMINATED THE PROCEEDING OF THE SECTION 800 PANEL. FORTUNATELY, MOST OF ITS RECOMMENDATIONS WERE REJECTED BY CONGRESS DURING THE EARLY PHASES OF PROCUREMENT REFORM DEBATE, AND ONLY A FEW OF ITS RECOMMENDATIONS REMAIN UNDER ACTIVE CONSIDERATION. GIVEN THEIR ORIGINS, WE ARE ALMOST AS SKEPTICAL OF THOSE REMAINING REFORM PROPOSALS AS WE WERE AT THE BEGINNING. IT IS CLEAR, FROM THE RECORD OF PREVIOUS HEARINGS, THAT WE ARE NOT ALONE IN THIS REGARD.

THE PANEL'S RECOMMENDATION TO ESTABLISH A NEW AND SIMPLIFIED ACQUISITION THRESHOLD AT $100,000 HAS SOME APPEAL ON ITS FACE, BUT THE ENVIRONMENT FOR IMPLEMENTING IT IS POOR. IT IS OBVIOUS THAT, IF IMPLEMENTED, THIS WOULD LIKELY REDUCE THE TOTAL NUMBER OF PURCHASING TRANSACTIONS, BUT IT ALSO RAISES THE VERY REAL PROSPECT THAT MORE BUNDLING OF THE REQUIREMENTS WILL BE THE RESULT. PERHAPS THERE IS A HIDDEN PURPOSE BEHIND THIS PROPOSAL.

LET ME EXPLAIN WHAT I MEAN BY A POOR ENVIRONMENT. THE OFFICES OF SMALL AND DISADVANTAGED BUSINESS UTILIZATION, THE PRINCIPAL INTERNAL AGENCY ADVOCATES FOR SMALL BUSINESS, ARE LARGELY INEFFECTUAL, AND HAVE LITTLE OR NO VOICE IN THE PROCUREMENT PROCESS. THEY NEED TO BE STRENGTHENED. THE SYSTEM FOR COMMUNICATING VITAL PROCUREMENT INFORMATION TO THE SMALL BUSINESS COMMUNITY IS ANTIQUATED, PRACTICALLY OBSOLETE, AND SURELY UNWORTHY OF A LARGE MODERN GOVERNMENT. EVEN IF YOU WERE TO ATTEMPT TO REPAIR THESE DEFICIENCIES IN THE PROCUREMENT ENVIRONMENT, THERE WOULD STILL BE TOO MANY TRAPDOORS AND TOO MANY LOOPHOLES. CONTRACTING OFFICERS HAVE LITTLE ABILITY TO HONESTLY EXERCISE THE RULE OF TWO WITHOUT RELIABLE AND EASILY ACCESSIBLE INFORMATION ON VENDORS. WHO IS GOING TO ENSURE THAT AN HONEST AND SINCERE EFFORT IS MADE TO PROTECT SMALL BUSINESS INTERESTS AGAINST THE ENCROACHMENT OF LARGE BUSINESSES UNDER A SCHEME THAT PUTS SUBSTANTIVE BLOCKS OF MONEY AT THE CASUAL DISCRETION OF WEAK BUREAUCRATS? THE PRESSURE ON THE PROCESS OF SELECTING POTENTIAL CONTRACTORS WILL OBVIOUSLY INTENSIFY AS THE PRIZE GETS BIGGER. IN

ORDER TO PROTECT THE INTERESTS OF SMALL BUSINESSES AGAINST THE LIKELY ASSAULTS OF LARGE BUSINESSES, CONGRESS WILL NEED TO DO MORE THAN SIMPLY ESTABLISH A NEW SMALL BUSINESS RESERVE. WE WILL NEED AN EXPANDED SMALL BUSINESS PREFERENCE, A MORE ENERGETIC SBA, AND WE WILL NEED TO PROVIDE INCENTIVES FOR INCREASED AGENCY USE OF SMALL BUSINESSES. THIS POLICY WOULD BE CONSISTENT WITH ALL WE KNOW ABOUT IMPORTANT CONTRIBUTIONS SMALL BUSINESSES MAKE TO THE ECONOMY THROUGH JOBS AND INNOVATION, AND, WE BELIEVE THIS IS A PROPITIOUS TIME IN THE ECONOMIC CYCLE TO ENERGIZE THE SMALL BUSINESS SECTOR. IT IS VERY DISAPPOINTING THAT THE MUCH HERALDED SMALL BUSINESS SECTOR HAS NOT BEEN GIVEN GREATER PROMINENCE, THUS FAR, IN THE PROCUREMENT REFORM DEBATE. MOST OF THE SMALL BUSINESS EMPHASIS IN PROCUREMENT REFORM PROPOSALS HAS BEEN GREETED WITH DEEP DISTRUST. WE NEED SOME PROACTIVE POLICIES.

BY NOW, WE ALL SHOULD BE WEARY OF THE FALSE DICHOTOMY THAT HAS BEEN PERPETUATED BY THIS NOTION THAT SMALL MEANS WEAK AND EXPENDABLE, AND LARGE MEANS GOOD, AND THEREFORE PREFERABLE. MANY WRITERS LIKE MARK GREEN AND JOHN F. BERRY, IN THE CHALLENGE OF HIDDEN PROFITS, HAVE POINTED OUT THE WASTE AND INEFFICIENCIES OF LARGE CORPORATIONS AND MAKE IT CLEAR THAT LARGE CORPORATIONS ARE FAR FROM BEING PARAGONS OF EFFICIENCY.

IF DEFENSE DOWNSIZING HAS TAUGHT US ANYTHING, IT HAS TAUGHT US THAT THE CORPORATE BEHEMOTHS, THAT GREW LARGE AND DEPENDENT ON COLD WAR SPENDING, WILL FIND A WAY TO MERGE, DIVERSIFY, BECOME LEANER, AND DO WHATEVER IT TAKES TO SURVIVE. THEY ARE NOT THREATENED WITH EXTINCTION. CLEARLY, CONGRESS NEEDS TO PAY MORE ATTENTION TO THE NEEDS OF SMALL BUSINESS, PARTICULARLY ITS NEED FOR MORE INVESTMENT CAPITAL AND MORE PROCUREMENT OPPORTUNITY. ALL BUSINESSES START SMALL. OUR ECONOMIC FUTURE MAY WELL REST ON THE NUMBER OF SMALL FIRMS FOR WHICH A SUPPORTIVE PUBLIC POLICY BECOMES AN ENABLER OF SMALL BUSINESS GROWTH. THE SMALL BUSINESS SHARE OF FEDERAL PROCUREMENT IS NOT GROWING. SMALL BUSINESS NEEDS GREATER CONGRESSIONAL ADVOCACY TO TRULY PROSPER. H.R.4362 IS A GOOD

BEGINNING.

IT SEEMS TO US THAT A MORE PRUDENT AND APPROPRIATE COURSE WOULD BE TO PROVIDE THE NECESSARY GUIDANCE AND RESOURCES TO MAKE ELECTRONIC COMMERCE A REALITY THROUGHOUT GOVERNMENT, SO THAT AT THE VERY LEAST, SMALL BUSINESSES WILL HAVE A WINDOW ON THE PROCUREMENT SYSTEM AND CAN TAKE ADVANTAGE OF THESE NEW EFFICIENCIES. WE ARE EXTREMELY PLEASED TO SEE THE INITIAL STEPS TOWARD THAT OBJECTIVE OUTLINED IN THIS BILL.

THE PROPONENTS OF THIS NEW SIMPLIFIED ACQUISITION THRESHOLD HAVE ARGUED THAT THIS CHANGE NEEDS TO TAKE PLACE IMMEDIATELY, EVEN THOUGH THE SO-CALLED ELECTRONIC DATA INTERCHANGE IS IN ITS FEEBLE INFANCY. I HAVE PROVIDED A COUPLE OF NEWS ARTICLES (SEE ATTACHMENT) ON SOME OF THE PROBLEMS SURROUNDING THE AIR FORCE'S EFFORTS TO BUILD AN EDI SYSTEM, A REAL FIASCO. THERE ARE ALLEGATIONS OF FRAUD, COPYRIGHT INFRINGEMENT, AND ABUSE OF AUTHORITY. I ASK THAT THESE NEWS ARTICLES BE MADE A PART OF MY STATEMENT. THE MAJOR STOCK EXCHANGES AND MANY COMMERCIAL FIRMS HAVE BEEN USING A FORM OF ELECTRONIC COMMERCE TECHNOLOGY FOR YEARS. WHY IS THE FEDERAL GOVERNMENT SO INEPT AT BRINGING THIS TECHNOLOGY TO THE PROCUREMENT SYSTEM? IT BOGGLES THE MIND.

THE NEW SIMPLIFIED ACQUISITION THRESHOLD IS ATTRACTIVE, AND IT NO DOUBT HAS SOME MERIT, BUT WE QUESTION WHY CONGRESS IS BEING ASKED TO SUSPEND ALL LOGIC AND GO RUSHING HEADLONG INTO THIS REFORM WITH NO NEW SAFEGUARDS IN SIGHT. FURTHERMORE, WHY IS THIS MATTER SO IMPORTANT TO BIG BUSINESS? I CALL THAT HEALTHY AND JUSTIFIABLE SKEPTICISM. WE HAVE HEARD ADMINISTRATION WITNESSES SAY THAT WITHOUT THIS AND OTHER CHANGES, THEIR REFORM PROPOSALS WOULD FALL APART.

BIG BUSINESS HAS RARELY, IF EVER, BEEN A FRIEND TO SMALL BUSINESS AND CERTAINLY NO FRIEND TO MINORITY BUSINESS.

BACK IN NOVEMBER, WE HAD THE OPPORTUNITY TO MEET WITH A REPRESENTATIVE OF A LARGE AIRCRAFT MANUFACTURER TO DISCUSS MINORITY BUSINESS ISSUES. WE WERE DISMAYED TO LEARN THAT NO EFFORT HAD BEEN MADE TO INCLUDE MINORITY SUPPLIERS IN THEIR VENDOR POOL. THE CONTRACTOR READILY ADMITTED THIS FAILING BUT EXCUSED ITS BEHAVIOR BY STATING THAT IT DIDN'T BELIEVE MINORITY FIRMS COULD MEET FAA CERTIFICATION REQUIREMENTS. WITH A NETWORK OF OVER 4,000 VENDORS, THIS CONTRACTOR HAD NEVER MADE A SINGLE EFFORT TO TEST THIS FALSE AND PREPOSTEROUS ASSUMPTION IN THE FIFTEEN YEARS SINCE THE SUBCONTRACTING LAW WAS ENACTED.

A LARGE ARMY CONTRACTOR CONDUCTED A CAMPAIGN OF INTIMIDATION AND THREATS IN ORDER TO COERCE SMALL SUBCONTRACTORS TO RELINQUISH THEIR CLAIM FOR ECONOMIC PRICE ADJUSTMENT DESPITE THE FACT THAT IT WAS PROVIDED FOR IN THEIR WRITTEN SUBAGREEMENTS. MORE THAN 500 SUPPLIERS WERE INVOLVED IN THIS NEFARIOUS SCHEME TO DENY SMALL FIRMS THEIR EQUITABLE CLAIMS. MANY OF THE VICTIMS OF THESE ABUSIVE TACTICS, INCLUDING MANY MINORITY-OWNED BUSINESSES, WERE DESTROYED BECAUSE THEY REFUSED TO GIVE UP THEIR RIGHTFUL CLAIMS.

THESE LARGE DEFENSE CONTRACTORS ARE PROBABLY THE SAME ONES BEHIND THE CAMPAIGN FOR THE NEW COMMERCIAL ITEM PROVISION UNDER CONSIDERATION. SOME HAVE EVEN SUGGESTED THAT A COMMERCIAL ITEM CONTRACTOR BE TREATED AS IF ITS RELATIONSHIP WITH THE GOVERNMENT CUSTOMER WERE MORE LIKE THE SUPPLIER-CUSTOMER RELATIONSHIP IN THE PRIVATE COMMERCIAL WORLD, AND SOME ARE EVEN URGING NEW PROVISIONS TO EXEMPT COMMERCIAL ITEM VENDORS FROM THE SUBCONTRACTING LAWS. AS YOU MAY BE AWARE, THERE IS ALREADY A PROVISION IN THE SUBCONTRACT LAW FOR COMMERCIAL ITEM VENDORS. IT HAS ALSO BEEN SUGGESTED THAT WHOLE INDUSTRIES, SUCH AS THE UTILITY INDUSTRY, BE EXEMPTED FROM THE SMALL BUSINESS ACT. WE ARE RESOLUTELY AND INALTERABLY OPPOSED TO ANY ABROGATION OF THE SUBCONTRACTING LAWS. WE FEEL THAT THESE ENERGIES WOULD BE MORE PROFITABLY SPENT ON FINDING WAYS TO BETTER ENFORCE THE SUBCONTRACTING LAW RATHER THAN WEAKEN IT.

WE ARE GREATLY DISAPPOINTED BY THE ADMINISTRATION'S EFFORTS TO SCUTTLE THE SUBCONTRACTING PROVISION OF THE ACT. WE REMEMBER SOME OF THESE SAME PROPOSALS FROM OUR REVIEW OF THE SECTION 800 PANEL. BY ACCEPTING PROPOSALS TO CREATE AN OVERLY BROAD DEFINITION OF COMMERCIAL ITEMS, AND EXEMPTING ALL QUALIFYING ACQUISITIONS FROM THE SUBCONTRACTING REQUIREMENTS, CONGRESS WOULD WEAKEN THE LAW BEYOND REPAIR. WE URGE THIS COMMITTEE TO VIGOROUSLY RESIST THIS IDEA. WHETHER OUT OF IGNORANCE OR WITH IGNOMINIOUS INTENT, THE ADMINISTRATION HAS CAMPAIGNED TO REVERSE A BROADLY ACCEPTED NATIONAL POLICY ESTABLISHED ALMOST 20 YEARS AGO FOR MINORITY BUSINESS, AND ALMOST 50 YEARS FOR SMALL BUSINESS. IT IS EXTREMELY DISTURBING TO WITNESS THE "DIVERSITY" CROWD IN ACTION, AND TO SEE THE GLARING CONTRADICTIONS.

ALL HEARD THE OUTRAGEOUS STORIES ABOUT THE VICE PRESIDENT'S FAMOUS ASHTRAY, AND THE EXORBITANT COSTS OF TOILET SEATS AND HAMMERS. WHAT THE SYSTEM REALLY NEEDS IS MORE COMMON SENSE IN PROCUREMENT. THE GOVERNMENT BUYS COMMERCIAL ITEMS EVERY DAY WITHOUT THE SLIGHTEST HESITATION. THE GENERAL SERVICES ADMINISTRATION'S FEDERAL SUPPLY SERVICE SEEMS TO HAVE LITTLE PROBLEM WITH THIS. WHAT SEEMS TO BE MISSING, ESPECIALLY AT THE PENTAGON, IS A GOOD DOSE OF REASONABLENESS AND A STRONGER MANDATE TO SEEK COMMERCIAL SOURCES FOR PRODUCTS, WHENEVER POSSIBLE. IT WOULD SEEM MORE LOGICAL AND PRUDENT TO EQUIP PURCHASING OFFICIALS WITH THE INFORMATION THEY NEED TO LOCATE AND IDENTIFY SOURCES OF COMMERCIAL PRODUCTS AND TO ENGAGE IN A CONTINUOUS WIDE-RANGING MARKET RESEARCH EFFORT. THE ASHTRAY, THE HAMMER, AND THE TOILET SEAT ARE NOT REPRESENTATIVE OF THE WAY THE GOVERNMENT BUYS, IN GENERAL. THESE INSTANCES ARE RATHER SYMBOLIC OF THE ABUSE THAT THE SYSTEM FAILED TO PREVENT. AND IF THERE IS A TEMPTATION TO OVER-SPECIFY TO THE EXCLUSION OF MANY PRODUCTS READILY AVAILABLE IN THE MARKETPLACE, WE BELIEVE MUCH OF THIS INORDINATE SPECIFYING WILL SUBSIDE AS MORE AND MORE INFORMATION BECOMES AVAILABLE TO PROCURING OFFICIALS.

THIS FANCIFUL NOTION THAT URGES THAT THE GOVERNMENT SHOULD BE MORE

LIKE A BUSINESS HAS SOME MERIT WHEN IT COMES TO ADOPTING COMMERCIALLY VIABLE TECHNOLOGY OR WHEN IT COMES TO USING MARKET RESEARCH TO DETERMINE WHAT IS THE BEST BUY. BUT THE FACT IS THAT THE GOVERNMENT'S VAST MISSION GOES WELL BEYOND THE COMMERCIAL REALM, AND ITS OPPORTUNITIES FOR GREATER EFFICIENCY ARE OFTEN LIMITED BY ITS OBLIGATIONS TO THE PUBLIC TRUST. AFTER ALL, THE TERM OF ART IS STILL "PUBLIC CONTRACT."

BEGINNING PERHAPS WITH THE FALSE CLAIMS ACT OF 1863, AND RIGHT UP TO THE PROCUREMENT INTEGRITY ACT, FEDERAL GOVERNMENT, THROUGH THE CONGRESS, HAS RESPONDED TO VARIOUS ABUSES OF THE PROCUREMENT SYSTEM BY PASSING LAWS TO REGULATE CORPORATE BEHAVIOR IN THE FEDERAL MARKETPLACE. SOME SUGGEST THAT THIS VAST ARRAY OF REGULATIONS IS PROHIBITIVE AND UNNECESSARY. WELL, SOME RULES ARE INTENTIONALLY PROHIBITIVE IN ORDER TO PREVENT ABUSE. BUT TO FANTASIZE THAT THE GOVERNMENT IS A BUSINESS IS TO IGNORE THE MORE IMPORTANT FEATURES OF THE ENTERPRISE, AND BORDERS ON PURE FOLLY. THE U.S GOVERNMENT IS THE WORLD'S LARGEST PURCHASER OF GOODS AND SERVICES, BUT IT HAS ENORMOUS ECONOMIC AND SOCIAL OBJECTIVES EMBEDDED IN EVERY DOLLAR IT SPENDS. HOWEVER, THOSE OBJECTIVES SHOULD NOT BE COMPROMISED PURELY FOR THE SAKE OF EFFICIENCY, ESPECIALLY SINCE THE PROPONENTS OFFER NO RELIABLE ESTIMATE REGARDING THE EFFICIENCY GAINS, OR THE SAVINGS TO BE ACHIEVED.

IN OUR VIEW, WHAT THE PROCUREMENT SYSTEM NEEDS MOST OF ALL IS AN OPEN WINDOW ON ITS ACTIVITIES. NOT EVEN CONGRESS HAS A COMPLETE PICTURE OF HOW ITS APPROPRIATIONS ARE BEING SPENT. THE RECENT SENATE SUBCOMMITTEE REPORT ON PROCUREMENT OFF-LOADING PROVIDES MANY EXAMPLES OF HOW THE SYSTEM IS BEING CORRUPTED AND SUBVERTED. AN ELECTRONIC DATA INTERCHANGE OFFERS AT LEAST THE POSSIBILITY OF AN OPEN SYSTEM.

THE SECOND MOST IMPORTANT NEED IS AN ORGANIZED AND DEDICATED COMPLIANCE STRUCTURE SIMILAR TO THE OFFICE OF CONTRACT COMPLIANCE PROGRAMS IN THE DEPARTMENT OF LABOR. SUCH AN EFFORT COULD EASILY

THRIVE OFF OF THE LIQUIDATED DAMAGES IT WOULD SURELY COLLECT. THIS IS NEEDED NOT ONLY TO ASSURE COMPLIANCE WITH SMALL BUSINESS MANDATES, BUT ESPECIALLY IN MINORITY BUSINESS PROGRAMS WHERE COMPLIANCE IS FALTERING SO BADLY AND WHERE THE HARM IS MOST DEVASTATING. WE URGE SERIOUS CONSIDERATION OF THIS IDEA BECAUSE, ON THE WHOLE, WE HAVE FOUND COMPLIANCE RESPONSIBILITY EXTREMELY DIFFICULT, IF NOT IMPOSSIBLE, TO PINPOINT.

WE HAVE REVIEWED A NUMBER OF PROPOSALS TO MAKE THE DOD SECTION 1207 PROGRAM APPLICABLE GOVERNMENT-WIDE. THIS IS THE ESSENTIAL THRUST OF THE BILL BEFORE US TODAY. ALTHOUGH WE ARE CONCERNED ABOUT THE IMPACT OF A GOVERNMENT-WIDE 1207-TYPE PROGRAM WITHOUT STRONGER MANDATES AND WITHOUT FIXED RESPONSIBILITY, BY MAKING THE SAME DOD TOOLS AVAILABLE TO CIVILIAN AGENCIES, A GREATLY EXPANDED PROGRAM IS DESTINED TO EMERGE. GENERALLY, WE SUPPORT THIS PROVISION OF YOUR BILL. BUT, IF WE ARE SERIOUS ABOUT BUSINESS DEVELOPMENT, WE NEED TO CLARIFY THE ROLE OF SBA IN RELATION TO THE VARIOUS CIVILIAN AGENCIES AND DEVELOP A PROCESS FOR TYING SBA'S CAPITAL RESOURCES TO FEDERAL PROCUREMENT OPPORTUNITIES, LEST WE WIND UP WITH A HODGE PODGE OF CONFUSION WHICH CAN ONLY HURT SMALL, MINORITY BUSINESSES. THE ROLE OF THE AGENCIES IN THIS RESPECT NEEDS TO BE CLARIFIED.

WE HAVE ALREADY DETECTED SUBSTANTIAL HOSTILITY AND INDIFFERENCE TOWARD MANY OF THESE PROGRAMS, AND ADDING UNCERTAINTY AND CONFUSION TO THIS MIX, WOULD CREATE EVEN MORE APATHY AND MORE FOOTDRAGGING. WE ALL ARE AWARE OF THE WIDESPREAD TENDENCY OF THE BUREAUCRACY TO AVOID MISTAKES BY LIVING BY THE LETTER OF THE RULE. CREATE CONFUSION AND AMBIGUITY, AND YOU WILL MOST CERTAINLY CREATE HESITATION.

THIS IDEA OF ALLOWING DIRECT CONTRACTING BETWEEN 8(A) FIRMS AND FEDERAL AGENCIES IS APPEALING. IT WOULD CERTAINLY HELP OVERCOME A MAJOR BOTTLENECK PROBLEM FOR PROGRAM PARTICIPANTS. THIS PROBLEM IS ESSENTIALLY ADMINISTRATIVE AND HAS OTHER SOLUTIONS. GENERALLY, THE DIRECT CONTRACTING SOLUTION IS ONE CREATED BY DESPERATION AND NEEDS

TO BE IMPLEMENTED ON A PILOT BASIS, FIRST, TO SEE IF IT WORKS WELL FOR ALL CONCERNED. AGAIN, BUSINESS DEVELOPMENT RESPONSIBILITIES NEED TO BE CLARIFIED. ALSO, ATTENTION SHOULD BE GIVEN TO ASSURING THAT SUBCONTRACTING OPPORTUNITIES ARE MADE A PART OF THE BUSINESS DEVELOPMENT SCHEME, AND TO STRENGTHENING AND ENLARGING THE AUTHORITY OF THE VARIOUS OFFICES OF SMALL AND DISADVANTAGED BUSINESS UTILIZATION. H.R. 4263 CALLS FOR SBA TO DEVELOP PLANS FOR THE USE OF A FEDERAL ACQUISITION COMPUTER NETWORK (FACNET) BY THE OSDBUs. ADDITIONALLY, WE THINK THAT HAVING SBA PUBLISH ALL SUBCONTRACTING OPPORTUNITIES AND AWARDS WOULD ALSO BE ALSO EXTREMELY HELPFUL, ESPECIALLY FOR THOSE 8(a) FIRMS IN THEIR MATURING YEARS.

LET ME SUMMARIZE MY CONCERNS. TO PRETEND THAT THE GOVERNMENT IS A BUSINESS IS PURE FOLLY. THAT THE ACQUISITION PROCESS NEEDS IMPROVEMENT IS UNDENIABLE, BUT THAT IMPROVEMENT SHOULD TAKE PLACE WITH A MISSION IN MIND AND WITH REASONABLE CONSIDERATION OF THE CONSEQUENCES. MEMBERS OF THE CONGRESS, AND ESPECIALLY THIS COMMITTEE, SHOULD RESIST CALLS FOR CHANGE THAT, UNDER THE GUISE OF STREAMLINING, MAY DO MORE HARM THAN GOOD. IT IS PAINFUL TO OBSERVE SOME OF THE WRONGHEADED IDEAS BEING ADVANCED BY THIS ADMINISTRATION. THIS ADMINISTRATION SEEMS HELL-BENT ON SELLING IDEAS AS GOOD FOR SMALL BUSINESSES, EVEN AS THE SMALL BUSINESS COMMUNITY RAISES OBJECTION AFTER OBJECTION TO ITS MANY BAD IDEAS. WHY IS SMALL BUSINESS BEING TREATED LIKE THE PROVERBIAL "POTTED PLANT"?

THESE ARE THE MAIN POINTS: WE URGE YOU NOT TO PUT THE CART BEFORE THE HORSE. WHILE THE NEW SIMPLIFIED ACQUISITION THRESHOLD IS ATTRACTIVE, SMALL BUSINESSES FEAR THAT THIS IS A TROJAN HORSE. THERE IS SUBSTANTIAL EVIDENCE THAT GOVERNMENT-WIDE EDI MAY BE A LONG WAY OFF, BUT WE FEEL THIS SHOULD BE THE HIGHEST PRIORITY OF PROCUREMENT REFORM. IT SHOULD BE THE CENTERPIECE OF REFORM. IT WOULD PROVIDE THE BEST ASSURANCES THAT CONGRESS' WILL IS FOLLOWED, AND IT WOULD INSPIRE GREATER CONFIDENCE IN THE PROCUREMENT PROCESS

BY TURNING ON THE LIGHTS. WE RECOGNIZE THE JURISDICTIONAL ISSUES WHICH THIS COMMITTEE MUST CONFRONT WHILE TRYING TO BIND THE NEW SIMPLIFIED THRESHOLD TO ELECTRONIC COMMERCE. WE CAN ONLY URGE THAT SOME MECHANISM BE PROVIDED SO THAT THE TWO EVENTS BE COORDINATED.

WE HAVE RECOMMENDED THE FORMATION OF AN INTERAGENCY EFFORT COMPRISED OF EXECUTIVE AGENCY INFORMATION MANAGERS TO EXPEDITE THE DEPLOYMENT OF EDI.

WE SEE NO COMPELLING REASON, AND SO FAR, NONE HAS BEEN OFFERED BY DOD OR ANYONE ELSE, TO LEAP PRECIPITOUSLY INTO A NEW SIMPLIFIED ACQUISITION THRESHOLD WITHOUT THE MINIMUM SAFEGUARDS THAT EDI REPRESENTS. AT A MINIMUM, THE NEW THRESHOLD SHOULD BE APPLICABLE ON AN AGENCY-BY-AGENCY BASIS AS AGENCIES DEVELOP THEIR ELECTRONIC COMMERCE CAPABILITY. WE FIRMLY BELIEVE THAT A NEW POLICY WHICH ENCOURAGES GREATER USE OF SMALL BUSINESSES, BEYOND ANY LIMITATION OF THE SMALL BUSINESS RESERVE PROPOSED HERE, IS VITALLY NEEDED, AND THAT SUCH A POLICY WOULD BE ENHANCED BY THESE NEW INFORMATION PORTALS.

WE BELIEVE THAT BY DEVELOPING SUCH A SYSTEM WILL NOT ONLY BE ADVANTAGEOUS TO THE ACQUISITION SYSTEM BUT ALSO TO THE CONGRESS AS IT EXERCISES ITS OVERSIGHT RESPONSIBILITIES. A TRULY OPEN ACQUISITION SYSTEM WILL CLEARLY BE AN IMPORTANT SAFEGUARD AGAINST CERTAIN FORMS OF ABUSE AND WILL PRODUCE A MORE COMPETITIVE ENVIRONMENT.

THAT THE GOVERNMENT SHOULD STOP WASTING MONEY ON DEVELOPING ITEMS OR PRODUCTS THAT ARE READILY AVAILABLE IN THE COMMERCIAL MARKETPLACE IS A PERFECTLY DEFENSIBLE PROPOSITION. TO EXTEND TO THAT PROPOSITION THE PRINCIPLES OF A PURELY COMMERCIAL BUSINESS TRANSACTION IS TO IGNORE ONE OF THE BASIC FOREWARNINGS OF BUSINESS: CAVEAT EMPTOR, OR "LET THE BUYER BEWARE," AND EXPOSE THE TAXPAYER AND THE GOVERNMENT TO UNNECESSARY RISKS. NOT ONCE, SINCE THE ADMINISTRATION BEGAN ITS CAMPAIGN FOR PROCUREMENT REFORM, HAVE WE

HEARD THE MENTION OF ANY PROPOSED BENEFITS TO BE DERIVED FROM STREAMLINING.

WE SUPPORT A USER-FRIENDLY AND PROPERLY FASHIONED SYSTEM OF ELECTRONIC COMMERCE THAT HAS THE POTENTIAL TO PREVENT GIANT FIRMS, LIKE LOCKHEED, FROM CROWDING OUT SMALL BUSINESSES IN THE COMPETITION TO PRINT THE DOD TELEPHONE DIRECTORY.

FINALLY, WE ARE EXTREMELY PLEASED TO SEE THAT YOU HAVE FINALLY ADDRESSED THE ISSUE OF GOALS. WE HAVE LONG BELIEVED THAT A GOVERNMENT-WIDE GOAL, ALONE, WAS FAR TOO ELUSIVE TO BE PRACTICAL. THIS BILL WILL SURELY HELP TO CLARIFY THE ISSUE. BUT I PLEAD WITH ALL OF YOU TO REDOUBLE YOUR EFFORTS IN SEEKING PRIME CONTRACTOR COMPLIANCE WITH VARIOUS PROVISIONS OF THE SMALL BUSINESS ACT, ESPECIALLY IN MINORITY BUSINESS SUBCONTRACTING PROGRAMS. WE URGE YOU TO GIVE SERIOUS CONSIDERATION TO ESTABLISHING A NEW COMPLIANCE STRUCTURE WITHIN SBA FOR THE PURPOSE OF CONDUCTING PERIODIC, IN-DEPTH REVIEWS AND INVESTIGATIONS. WE ARE CONVINCED THAT VIOLATIONS OF THE SMALL BUSINESS ACT ARE WIDESPREAD, IF NOT RAMPANT, THROUGHOUT THE GOVERNMENT. FOR EXAMPLE, WE LEARNED RECENTLY THAT 24 OUT OF 28 UTILITIES DOING BUSINESS WITH THE DEPARTMENT OF ENERGY HAVE REGULARLY FAILED TO SUBMIT SUBCONTRACTING PLANS AS REQUIRED BY THE LAW. SIMILARLY, WE THINK IT APPROPRIATE THAT PARTIES CLAIMING HARM UNDER THE SMALL BUSINESS ACT TO HAVE THEIR CLAIMS HEARD IN THE FEDERAL COURT OF CLAIMS AND THAT SUCH PLAINTIFFS SHOULD HAVE STANDING UNDER THE FALSE CLAIMS ACT.

RECENTLY, THE DEPARTMENT OF JUSTICE FILED A COMPLAINT AGAINST A MAJOR CONSTRUCTION FIRM BECAUSE OF A PATTERN OF ABUSE THAT COULD ONLY BE DESCRIBED AS "LARGE-SCALE FRONTING". WE BELIEVE A LOT MORE SHOULD BE DONE TO UNCOVER ABUSE WHICH OCCURS ALL TOO FREQUENTLY WITH THE TACIT CONSENT OF THE BUREAUCRACY. WE SIMPLY MUST TAKE THESE MATTERS MORE SERIOUSLY. THOSE WHO WILL FLAUNT THESE LAWS WITH IMPUNITY WILL BE EMBOLDENED TOWARD GREATER ABUSE IN OTHER AREAS.

WHATEVER IS FINALLY DECIDED REGARDING THE CREATION OF A NEW CLASS OF COMMERCIAL ITEM VENDORS, WE ARE ADAMANTLY OPPOSED TO ANY EXEMPTION OR WAIVER OF THE SUBCONTRACTING REQUIREMENTS OF THE SMALL BUSINESS ACT, WHETHER INDUSTRY-SPECIFIC OR NOT.

WE HAVE ALREADY WITNESSED THE INTENSE PRESSURE FROM THE ADMINISTRATION TO GET THE CONGRESS TO ACCEPT IT'S VERSION OF ACQUISITION STREAMLINING. IN THE MATTER OF THE FLOW DOWN REQUIREMENTS OF THE ACT, THE ADMINISTRATION IS TOTALLY MISGUIDED. LET'S HAVE A DEBATE WHERE HONEST AND SINCERE PEOPLE MAY DISAGREE. THE PLAIN FACT IS THAT PRACTICALLY ALL MANUFACTURERS HAVE SUBCONTRACTING PLANS. WITHOUT SUCH PLANS, THE MANUFACTURING PROCESS WOULD BE IN TOTAL CHAOS. THOSE WHO ARGUE THAT THIS IS UNIQUE TO GOVERNMENT ARE BEING BOLDLY DISINGENUOUS. ANY DILUTION OF THE SMALL BUSINESS ACT IS EXACTLY WHAT SMALL AND MINORITY SMALL BUSINESSES DON'T NEED. WHAT IS NEEDED IS A SET OF MEANINGFUL SAFEGUARDS AND A COMMITMENT TO OPEN UP THE PROCUREMENT SYSTEM TO MAKE IT TRULY COMPETITIVE BY PROVIDING THE UNIVERSAL ACCESS THAT A USER-FRIENDLY ELECTRONIC DATA INTERCHANGE SYSTEM REPRESENTS.

JUST ABOUT 100 LARGE FIRMS ARE AWARDED MORE THAN 60% OF ALL FEDERAL CONTRACTS EACH YEAR. THIS TYPE OF CONCENTRATION IS ALREADY UNHEALTHY. IF ENACTED, MANY OF THE ADMINISTRATION'S PROPOSALS WILL ONLY INTENSIFY THESE CURRENT TRENDS IN PROCUREMENT, AND CONCENTRATION WILL CONTINUE. CONGRESS HAS THE POWER TO SET IN MOTION A POLICY TO PROSCRIBE THIS INORDINATE CONCENTRATION. BUT, SO FAR, NEITHER HOUSE HAS ADDRESSED THIS AS PART OF THIS STREAMLINING EFFORT. CONGRESS SHOULD GIVE SERIOUS ATTENTION TO ADOPTING POLICIES WHICH WILL GRADUALLY REVERSE THIS DANGEROUS TREND. IF THE TREND CONTINUES, IN YEARS TO COME, IT MAY BE EVEN MORE DIFFICULT TO ENLARGE AND DIVERSIFY THE FEDERAL VENDOR BASE. WE NEED A POLICY WHICH STRENGTHENS SMALL BUSINESSES. FOR AMONG THESE MEGAFIRMS ARE SOME OF THE MOST EGREGIOUS VIOLATORS OF THE SMALL BUSINESS ACT. CHANGING TO MORE A PROACTIVE SMALL BUSINESS POLICY, AS REFLECTED BY

THE BILL AT HAND, WOULD BE AN IMPORTANT FIRST STEP IN PROCUREMENT REFORM.

THANK YOU, AND I WOULD BE PLEASED TO ANSWER ANY QUESTIONS YOU MAY HAVE.

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

OFFICE OF FEDERAL
PROCUREMENT POLICY

NOT FOR RELEASE UNTIL
DELIVERY April 28, 1994

STATEMENT

OF

STEVEN KELMAN

ADMINISTRATOR FOR FEDERAL PROCUREMENT POLICY

BEFORE THE

THE COMMITTEE ON SMALL BUSINESS

UNITED STATES HOUSE OF REPRESENTATIVES

APRIL 28, 1994

Mr. Chairmen and members of the Committee, I appreciate the opportunity to appear before you today to provide the Administration's view on H.R. 4263, the "Small Business and Minority Business Procurement Opportunities Act of 1994." The purpose of this bill is to promote the participation of small

business enterprises, including minority small businesses, in federal procurement and government contracts -- a goal which the Administration strongly supports. During recent hearings before Congress on procurement streamlining legislation introduced both in the House and the Senate, I have said repeatedly -- and want to confirm to you and the members of this Committee today -- that the Administration views small and minority owned business concerns as fundamental and critical sources of supply for the government. I am pleased to note the increases in participation by these businesses in the last few years. Data from the Federal Procurement Data Center indicate that between FY 90 and FY 93, small business participation in government contracting increased from $35 billion to $39 billion. During this same period, participation by small disadvantaged businesses increased dramatically -- by over 50 percent -- from $6 billion to $9.3 billion.

Mr. Chairman, I also want to take some time, this morning, to discuss the Administration's efforts to streamline the federal acquisition process. In the next few weeks, with cooperation between the Congress and the Administration, we have an opportunity to make significant changes in procurement procedures that will improve the ability of federal agencies to provide substantially increased value to taxpayers. This is an effort we know you support, and we seek your collaboration in making this effort a reality. I believe that as we implement needed changes in the procurement system, we will, at the same time, improve

access by small and small disadvantaged businesses to procurement opportunities.

Over the last 25 years, the federal acquisition system has evolved into a complex and burdensome maze of laws and regulations that (1) discourage federal personnel from exercising prudent discretion and good business judgement and (2) fails to provide significant incentives for contractors to deliver quality. The Vice President's National Performance Review (NPR) and the Acquisition Law Advisory Panel to the U.S. Congress on Streamlining Defense Acquisition Law, known as the 800 Panel, documented the need to streamline procurement procedures to increase access and competition in Federal procurements, provide the best technologies available for national defense, and save the government money. Both of these studies also recognized the importance of small and small minority businesses as sources for supplies and services for the government and made recommendations to improve access by such entities to government contracts.

For the past year, representatives of the Administration have been working with the professional staffs of the key Committees of the Senate and the House, including the staff members of this Committee, to implement the recommendations of the NPR and the Section 800 Panel. As we move forward to implement these recommendations, it is imperative that we balance the need to improve small business access to federal contracting opportunities with the need to streamline the federal contracting process. Streamlining is essential if we are going to achieve

budget savings and serve customers with fewer personnel resources. As you know, one of the key recommendations of the NPR is to reduce the federal workforce by 252,000. Congress has increased that number to 272,900. Many of those positions will be procurement positions. We cannot achieve these downsizing goals without procurement streamlining.

With these goals in mind, I would like to address the provisions of H.R. 4236.

Functions of the Small Business Administration.

New section 28 would be added to the Small Business Act to require the Administrator of the Small Business Administration (SBA), in coordination with other federal agencies, to develop plans to coordinate and promote the use of the "Federal Acquisition Computer Network" by small businesses and to inform and provide consistent comprehensive training on the network for small businesses. We support the purpose of this section, which is to prepare small business to compete in the new electronic contracting system that is being developed. However, this section reflects the requirements of H.R. 2238, as reported by the Committee on Government Operations of the House, which requires establishment of the network to implement the proposed simplified acquisition threshold of $100,000. The Administration has objected to these provisions that require agencies to implement the network before procurements can be made using simplified procedures. We believe that agencies should be able

to use the simplified procedures while continuing to publish procurement opportunities in the Commerce Business Daily until such time as they are able to implement a government wide compatible Electronic Commerce/Electronic Data Interchange (EC/EDI) system. A proposal similar to this is now pending in S.1587, which is being considered in the Senate.

As you are aware, the President in a Memorandum dated October 26, 1993, has proposed a rapid buildup of EC/EDI in the federal government. The widespread use of EC/EDI will substantially improve the efficiency of the procurement process and, because of increased visibility of procurement opportunities, ensure that small business receives adequate notice of them. Additional benefits that small businesses could obtain from EC are:

1) access to 50,000 small purchase solicitation opportunities daily;

2) the ability to select specific solicitations and submit quotes on those of interest electronically;

3) the ability to receive purchase orders electronically if they are the successful offeror; and

4) access to award information if they are not.

The EC/EDI system will further benefit small businesses by eventually facilitating payments through electronic funds transfer and will significantly reduce paperwork burdens for both industry and government.

I wish to assure the Committee of the Administration's full commitment to the buildup of EC/EDI in the federal government. It is one of my highest priorities, and it is an issue to which I devote significant personal time. I promise that continued commitment no matter what decision Congress makes on whether the increase in the simplified acquisition threshold is linked to EC/EDI.

Small Business Reservation.

This section amends section 15(j) of the Small Business Act (15 U.S.C. 644(j)) to reserve each contract for goods and services that has an anticipated value not in excess of $100,000 exclusively for small businesses unless the contracting officer cannot obtain offers from two or more small business concerns that are competitive with market prices, quality, and delivery. This amendment, along with those of section 3 of the bill which establish the $100,000 SAT, is consistent with the recommendations of the Administration and has our strong support. We also appreciate and support the provisions in section 3 of the bill that waive the small purchase reservation of the Small Business Act for micro-purchases of $2,500 or less.

However, we have concerns about the mandated use of fast payment terms because of reported abuses by some suppliers. It is for that reason we have limited fast payment procedures to contracts under $25,000 where there is a significant geographic distance between the supplier and the payment office. We

understand that, under your bill, fast pay procedures would be required only "wherever circumstances permit."

Technical and Conforming Changes.

Section 4 amends sections 3 and 8 of the Small Business Act to establish the SAT and micro-purchase thresholds defined in the Office of Federal Procurement Policy Act as amended by H.R. 2238.. Both of these provisions are high priorities of the Administration's streamlining program. Purchases under the SAT will be made, whenever possible, using simple streamlined procedures while promoting competition to the maximum extent practicable. Currently, small purchases, which account for approximately 95% of all procurement actions taken and 10% of the procurement dollars expended each fiscal year, average less than a month to complete. The $100,000 SAT will add another 45,000 procurement with a total value of approximately $3 billion to this class of procurement actions. Because buying activities will use simplified procedures and forms, and these procurements will be reserved for small businesses, this will be a vital tool in achieving both streamlining and improving small business access to procurement, mutual goals of this Committee and the Administration.

Contract Goals for Small Businesses Owned by Economically and Socially Disadvantaged Individuals and for Certain Institutions of Higher Education.

Section 5 expands the requirements of section 15(g) of the Small Business Act by requiring the President to annually

establish government-wide goals for small business and small business owned by socially and economically disadvantaged individuals of not less that 20 percent and 5 percent respectively of the total value of contracts and subcontract awards for each fiscal year. The amendments require that the 5 percent goal for small disadvantaged business include goals for awards to small disadvantaged media and advertising firms, historically black colleges and universities, and minority institutions, including Hispanic-serving institutions. Mr. Chairman, the Administration fully supports the objectives of this provision as laudable and necessary for our government procurement system.

We also offer our very strong support for expanding the authority for small disadvantaged business set asides as described in proposed amendments to subsection 15(g)(6)(D) of H.R. 4263. However, we believe that amendments to the full and open competition requirements of the Competition in Contracting Act that are necessary to authorize small disadvantaged business set asides should be made in Title III of the Federal Property and Administrative Services Act (FPASA) as recommended by the NPR and not the Small Business Act. We note that section 9002 of H.R. 2238 amends Title III of the FPASA as recommended by the NPR.

Mr. Chairman, we have very serious concerns about several provisions contained in section 5 of the bill.

As amended, section 15(g)(4) would require SBA, in consultation with the Administrator for Federal Procurement Policy, to provide "procedures and guidelines" to contracting officers to set goals for prime contractors under subcontract plans. In addition, new subsection 15(g)(7)(F) would require SBA, in consultation with the OFPP Administrator, to prescribe regulations which provide procedures and guidance to contracting officers for (1) providing incentives to prime contractors to increase subcontract awards to small disadvantaged businesses, (2) emphasizing awards to small disadvantaged businesses in all industry categories, (3) understanding the relationship to other small business set asides programs (4) designating a procurement as a set aside before solicitation, (5) maintaining the current level of overall small business set asides while providing new opportunities for small disadvantaged businesses, (6) implementing this new section so as not to interfere with the overall small business program, and (7) requiring contracting officers to be evaluated on their ability to increase small disadvantaged business awards. In addition, new subsections 15(g)(8) and (9) contain procurement procedures that would more be appropriately included in regulation.

Although it is our understanding that section 15(g)(12) is intended to ensure that these provisions of this bill do not affect the §1207 in the Department of Defense, we believe that each of the foregoing provisions in section 5 of the bill interferes with the statutory authority of the Secretary of

Defense, the Administrator of the General Services Administration, the Administrator of the National Aeronautics and Space Administration, and the Administrator for Federal Procurement Policy to promulgate procurement regulations that govern the acquisition of supplies and services for Executive Branch agencies. The current regulatory system, established under the Office of Federal Procurement Policy Act (OFPP Act), ensures that a wide range of views are considered as regulations are developed. We believe that this system is best suited to achieve the goals of the Congress and the Administration. Therefore, we cannot support the provisions of section 5 of the bill as presently drafted. I would note, however, that I already have a responsibility to consult with SBA as I carry out my responsibilities under the OFPP Act. I have done so as the Administration's procurement streamlining initiatives have been developed, and I plan to continue as we attempt to achieve these goals.

Commercial Items

I would like to conclude my testimony with a brief discussion of the Administration's goals to streamline the acquisition of commercial products. An essential element of maintaining an adequate industrial base for the requirements for our nation's defense is the conversion of the defense industrial base to commercial practices. A key to achieving this goal is the development of dual-use technologies and commercial practices and reduction of defense-unique production lines.

In addition, we can get the best value for our procurement dollars by acquiring products that have withstood the test of the commercial marketplace. We must, therefore, make every effort to encourage the use of commercial products and eliminate from such acquisitions the application of government-unique laws and policies, particularly those with flowdown requirements imposed directly on subcontractors. A number of these government-unique laws are modified or waived in H.R. 2238. One of the provisions that we would like relief from in the commercial products program is the requirement for flowdown of the requirement for subcontracting plans of section 8(d) of the Small Business Act. Waiver of this requirement would allow the government greater access to commercial vendors. Often these vendors refuse to do business with the government because the flowdown requirements impose burdens on their commercial suppliers that those suppliers are unwilling to accept. Under this proposal, we would continue to require subcontracting plans from prime contractors for commercial products and from prime contractors and subcontractors for military or other non-commercial products.

Mr. Chairman, I look forward to cooperating with the Committee as we work to achieve our mutual goals of streamlining the federal procurement process and improving access to procurement opportunities by small and small disadvantaged businesses. I will be pleased to answer any questions that you may have.

TESTIMONY OF

THE LATIN AMERICAN MANAGEMENT ASSOCIATION

before the

COMMITTEE ON SMALL BUSINESS

U.S. HOUSE OF REPRESENTATIVES

April 28, 1994

Thank you, Chairman LaFalce and members of the Small Business Committee.

My name is Marina Laverdy. I am the Acting Executive Director of the Latin American Management Association ("LAMA"). LAMA is a national trade association which serves the Hispanic and minority business communities by promoting the interests of minority businesses in both the public and private sectors.

LAMA is a participant in the Small Business Working Group on Procurement Reform and we endorse the testimony being given today by that Group. Our testimony today is meant to supplement the testimony of the Small Business Working Group by emphasizing areas of particular importance to our membership.

LAMA is also a member of a Coalition of minority trade associations including Asian-American Business Roundtable, Black Presidents' Roundtable Association, Latin Business Association of L.A., Minority Business Association of Northern Virginia, Minority

Business Enterprise Legal Defense and Education Fund, Native American Businesses, Hispanic Chamber of Commerce, Laguna Industries, and National Indian Business Association. This Coalition was established in 1993 to advocate positive changes to the SBA's Section 8(a) program and other programs for minority business. The Coalition has been advocating, among other changes, the extension of the Section 1207 program to all civilian agencies. The Coalition is pleased that H.R. 4263, as well as other pending reform legislation, adopts this concept.

Our comments today will focus on Section 5 of H.R. 4263, the "Small Business and Minority Small Business Procurement Opportunities Act of 1994." However, we recognize that its provisions must be assessed in the context of H.R. 2238, the "Federal Acquisition Improvements Act of 1994," ordered reported in July 1993 by the Committee on Government Operations, and the substitute ordered reported on April 21, 1994, by the Committee on Armed Services.

We commend Chairman LaFalce for raising objections to the proposed Armed Services Committee Substitute to H.R. 2238; for introducing H.R. 4263, the "Small Business and Minority Small Business Procurement Opportunities Act of 1994;" and for holding this hearing. Indeed, many of the measures in the H.R. 2238 Substitute bill would, if enacted, have serious implications for the small business community. Therefore, we feel that it is particularly appropriate that the Small Business Committee has chosen to closely review those procurement reform measures that

relate not only to the Small Business Act, but to small minority businesses, generally.

Implementation of SDB Programs in All Federal Agencies. As previously noted, LAMA and the other members of our Coalition strongly support implementation of a government-wide SDB program.

We prefer Section 5 of H.R. 4263 to the corresponding Section 9002 of the H.R. 2238 Substitute bill. We agree that the Small Business Administration ("SBA") should play a role in establishing guidelines and enforcing the government-wide SDB program. The SBA has an established track record in the oversight of minority small business programs. For example, the SBA is responsible for making eligibility determinations under DOD's Section 1207 program when SDB eligibility is challenged. In addition, the SBA's involvement in the government-wide program will promote uniformity and avoid a fragmented and uneven approach among individual agencies.

Therefore, any extension of the SDB program to all federal agencies must ensure that the SBA plays a role in both the development of program procedures, as well as the enforcement of program requirements. Neither the Office of Federal Procurement Policy nor the individual agencies are equipped to handle these tasks alone.

The Creation of Incentives Under the SDB Program. We strongly support the creation of incentives for prime contractors to increase awards to SDB subcontractors. Such incentives are critical, particularly given recent trends in federal contracting.

With the increasing use of contract "bundling," and the current emphasis being placed on "streamlining" the acquisition process, it will become increasingly important that prime contractors adhere to their obligation to subcontract to SDBs.

Given the importance of this issue, we feel that Section 5 (and Section 9002 of the H.R. 2238 Substitute bill) should go a step further to require that incentives be in place within one year after passage of the Act. Further, the bill should identify at least some of the specific incentives that should be implemented. For example, as a separate evaluation factor, solicitations should require that prime contractors identify SDBs in their proposals, including their committed level of participation. In addition, the failure of a contractor to meet its negotiated SDB subcontractor goal should trigger an audit into the contractor's outreach program.

We are also pleased to see a provision in H.R. 4263 that requires contracting officer performance evaluations to include, as one factor, the ability to increase SDB awards. Again, this requirement will create a definitive incentive for contracting officers to achieve the statutory SDB goal. With the trend toward fewer and larger prime contracts, these and other similar incentives are essential to protect the interests of small minority businesses.

The SDB Goal Should Make Clear that Higher Agency-Specific SDB Goals Should Remain in Place. H.R. 4263 (and Section 9002 of the H.R. 2238 Substitute bill) should be revised to make clear from the outset that the 5% goal is a recommended minimum and not meant to permit agencies with higher goals to decrease those agency-specific goals. As the Committee is aware, many civilian agencies currently implement agency-specific SDB programs that establish goals higher than 5%. We recognize that, later in the bill, it is stated that the 5% goal should not supersede other laws. However, the perception remains that an agency that currently implements a 10% goal can (or should) reduce that goal to 5%. The reduction of current goals (which are above 5%) should be expressly discouraged. Agencies should also be encouraged to exceed the recommended 5% goal. In addition, we believe that the bill should state clearly that the ultimate objective is to increase SDB participation well beyond the 5% goal. Without this clarification, agencies now implementing SDB goals above 5% may view the legislation as an opportunity to reduce their current goals to bring them in line with the "government standard."

Agencies Should Not be Able to Adjust the 10% Price Preference. H.R. 4263 would allow an agency to adjust the 10% price preference if "available information" shows that non-disadvantaged small businesses are being denied opportunities. The threat of losing the preference would have a serious economic impact on SDB firms.

This overly broad provision would give agencies nearly unfettered discretion to decrease or even eliminate the 10% preference, and should therefore, be eliminated. The term "available information," upon which the preference may be adjusted, is sufficiently vague so as to constitute nearly any compilation of data imaginable. Large businesses seeking particular contracts will be encouraged to flood contracting officers with self-serving and one-sided data. The bill does not place any requirement on contracting officers to verify the accuracy of the data presented, nor is there any objective statistical criteria identified in the bill that would serve as a benchmark for determining whether nondisadvantaged businesses are, in fact, being denied opportunities.

Agencies Should Not be Allowed to Decrease the SDB Goal. We strongly oppose Section 15(g)(9)(A) in H.R. 4263 that would allow individual agencies to determine whether a "disproportionate share" of SDB contracts are being awarded within a particular industry and, as a corrective measure, to take "appropriate actions" to limit the further use of set-asides in that industry.

In 1988, Congress created the Small Business Competitiveness Demonstration Program as a pilot program to restrict set-asides in specific industry categories until 1996. Until the results of this program are reviewed in 1996, and the impact of restricting set-asides more fully understood, the proposal to permit procuring

agencies the power to decrease the SDB goal by industry classification is premature.

Training for Use of FACNET System. We strongly support Section 2 of H.R. 4263 which would authorize comprehensive training on the FACNET system. Many small businesses lack the resources to educate themselves on such a computerized network. The creation of a training program will only serve to increase the numbers of small businesses that are able to learn of upcoming opportunities.

Finally, although not contained in H.R. 4263, we would like to state for the record our particular concern on two other issues that were discussed at length in the testimony of the Small Business Working Group. These issues relate to the acquisition of "commercial items."

Subcontracting Requirements in Procurements for "Commercial Items". Sections 7005 and 7014 of the H.R. 2238 Substitute bill would excuse subcontractors providing "commercial items" from the requirements of the Small Business Act, including the requirement to implement a Section 8(d) subcontracting plan. We emphatically oppose these provisions which threaten the continued viability of many small and minority-owned businesses. Although the objective of streamlining the acquisition of "commercial items" is a desirable one, it must not be achieved at the expense of requirements designed to promote small and minority business opportunities. Compliance with Section 8(d) subcontracting plan requirements is neither difficult nor burdensome. Moreover, these

requirements are critical to the development of minority-owned companies. The effect of such a provision would be even worsened in light of the growing trend of contract "bundling." With little hope of winning such large and diverse contracts small businesses must depend on subcontracting opportunities. The small and minority-owned business community will be pushed further out of the government marketplace if Section 8(d) subcontracting requirements are relaxed in any way.

Definition of "Commercial Items". The small minority-owned business community is also very concerned about the breadth of the definition of "commercial items." A narrowly tailored definition is critical in avoiding a negative impact on small businesses. In fact, we understand that H.R. 2238, as ordered reported by the Armed Services Committee, radically expands the definition to include "commercial services." Under the definition, almost any service could qualify as a "commercial service." In addition, many such services are traditionally performed by small businesses (e.g., installation, maintenance, and training services); therefore, "off-the-shelf" acquisition of these services would further erode opportunities for small businesses. When and if the issue is presented to the Committee members, we ask that you ensure that small business opportunities are not sacrificed for the sake of simplifying the acquisition process.

Thank you again for the opportunity to present our views to the Committee. LAMA would be pleased to work with this Committee and the Committees on Government Operations and Armed Services to develop appropriate language which protects the interests of the small minority business community.

Statement of

E. Colette Nelson
Chair, Procurement Committee
Small Business Legislative Council

on behalf of the

Small Business Working Group
on Procurement Reform

before the

Committee on Small Business
U.S. House of Representatives

April 28, 1994

Statement of
Small Business Working Group
on Procurement Reform
on H.R. 4263,
"Small Business and Minority Small Business Procurement Opportunities Act of 1994"

My name is Colette Nelson. I am the executive director of the American Subcontractors Association and chair of the Procurement Committee of the Small Business Legislative Council. Today, I am representing the Small Business Working Group on Procurement Reform, an informal coalition representing associations that serve as advocates for small businesses, including small businesses owned by minorities and women.

These groups appear before the Committee united in our concerns about the procurement reform legislation currently pending before the House of Representatives. It is our view that any proposal for streamlining federal acquisition concurrently must avoid creating any new impediments and must eliminate identified existing impediments to small business participation in the government marketplace. Streamlining must not simply be from the perspective of the Government buyer; it also must emphasize the business realities and the right to fair treatment of those selling to the Government, especially small business concerns.

Our comments today will focus on H.R. 4263, the "Small Business and Minority Small Business Procurement Opportunities Act of 1994." However, we recognize that its provisions must be assessed in the context of H.R. 2238, the "Federal Acquisition Improvements Act of 1994," ordered reported in July 1993 by the Committee on Government Operations, and the substitute ordered reported on April 21, 1994, by the Committee on Armed Services.

Simplified Acquisition Threshold

Great emphasis has been placed by many proponents of acquisition reform on the establishment of a new "simplified acquisition threshold," which essentially would raise the current small purchase threshold from $25,000 to $100,000. The objective of this effort, in our view, is to eliminate the protections currently afforded by the Small Business Act to assure that small firms will have adequate prior notice of government contracting opportunities and adequate time to fashion an offer responsive to the government solicitation. The procurement bureaucracy vigorously opposed these protections when they were placed into law in 1984 and frequently have sought to undermine them both administratively and through legislation. (See record of hearing before the Subcommittee on Procurement, Taxation and Tourism, June 22, 1993).

The Small Business Working Group has testified repeatedly before subcommittees of this Committee, as well as the Government Operations Committee's Subcommittee on Legislation and National Security, with respect to the protections we believe need to be put in place to assure that small businesses have access to information and adequate time to compete for these $100,000 "small purchase" contracts. The following discussion seeks to measure the provisions of H.R. 4263 (and related provisions in H.R. 2238), against the specific recommendations we made in these earlier hearings.

(1) **Link any increase in the small purchase threshold with a concurrent obligation on the part of buying activities to improve local notice procedures.** The Working Group sees no incompatibility between the current statutory requirements to have local posting for ten days before offers are solicited, whether they are solicited orally or in writing. Congress should

make it explicit that the current right accorded small business concerns applies even when oral solicitations are used. H.R. 2238, as ordered reported by the Committee on Government Operations, does just that. Neither H.R. 4263, nor H.R. 2238, as ordered reported by the Committee on Armed Services, addresses this issue.

The Committee will recall that when representatives of the Working Group testified before its Procurement Subcommittee on June 22, 1993, we submitted for the record a letter to Dr. Allan V. Burman, then the Administrator for Federal Procurement Policy (See Attachment A). In that letter, we asked Dr. Burman to use the authority granted the OFPP Administrator in Section 6 of the Office of Federal Procurement Policy Act, to initiate action to amend the Federal Acquisition Regulation Part 13, Small Purchase and Other Simplified Procedures, to bring it into compliance with existing law.

Five months later, on November 17, 1993, Dr. Burman got around to asking the opinions of the three career officials from the Department of Defense, the General Services Administration and the National Aeronautics and Space Administration that along with the Administrator comprise the FAR Council (See Attachment B). Dr. Burman's inquiry to the other three regulatory barons didn't even set a timetable for them to respond.

Another five months have elapsed and, despite repeated requests, the new OFPP Administrator Dr. Steven Kelman still has not responded to our June 21, 1993, letter. The apparent scorn for the small businesses of this country is disheartening. The disregard for a statute, passed by Congress and signed by the President, is frightening.

H.R. 2238, as ordered reported by the Committee on Government Operations, clarifies the current statutorily-required posting requirements for contracting opportunities below the

small purchase threshold by making explicit that award is not to be made during the pendency of such postings, even when the solicitations are made orally. Neither H.R. 4263 nor H.R. 2238, as ordered reported by the Committee on Armed Services, addresses this issue.

We support the provision embodied in H.R. 2238, as ordered reported by the Committee on Government Operations. We believe that Congress should not lose sight of the distinction between the outreach function of oral solicitations and the right to have one's offer considered before some specified date for the receipt of proposals.

Nonetheless, in light of the regulation writers disdain and disregard for the existing law, the Small Business Working Group recommends that the Small Business Committee take immediate steps to assure that the 1984 statutory requirements are implemented and properly enforced. We question whether it is appropriate to even consider new legislation making changes in the law governing small purchases, when the regulation writers have not yet implemented a law enacted more than 10 years ago.

(2) **Link any increase in the small purchase threshold with a concurrent obligation to implement a coordinated Government-wide electronic contracting system.** The Small Business Working Group believes that H.R. 2238, as reported by the Committee on Government Operations, most effectively links the increase in the Simplified Acquisition Threshold to the implementation of electronic commerce. That bill conditions the increase of the small purchase threshold to $50,000 on the use of a Government-wide system for notices of solicitations.

In addition, H.R. 2238, as ordered reported by the Committee on Government Operations, conditions an increase in the small purchase threshold to $100,000 on the actual

implementation by a procuring agency of a common Government-wide system providing for comprehensive electronic commerce, including notice of solicitation; responses to solicitations and requests for information; information with respect to such requests; orders; and public notice of awards. We strongly believe this is the most effective inducement to encourage the executive agencies to implement such electronic commerce. However, we would urge that a complete system for electronic commerce should include payment and not be limited in its ultimate application just to small purchases. The Treasury Department's Vendor Express demonstration program shows the benefits of electronic fund transfers to the vendor community and the Government.

H.R. 2238, as ordered reported by the House Armed Services Committee, also would establish an elaborate scheme for the implementation of electronic commerce. While this implementation scheme maintains a linkage between the increase in the small purchase threshold to $100,000 and the implementation of a system of electronic commerce, we believe it contains several major loopholes. Under new section 10 U.S.C. 2302b(c), a certification of interim electronic commerce capability would permit one of the military services or a Defense agency to exempt itself from the requirement to announce contracting opportunities in the *Commerce Business Daily*. DoD's implementation plan for electronic commerce does not contemplate coverage of more than 80 percent of its buying activities. Essentially, this means that the business opportunities of 20 percent of the buying activities within DoD simply will disappear. We strongly recommend that buying activities not covered by the electronic commerce system still be required to comply with existing statutory requirements for publication in the *CBD* of contract solicitation announcements in excess of $25,000.

The Small Business Working Group urges this Committee to endorse the approach taken by the Government Operations Committee.

(3) **Eliminate the requirement that the small purchase threshold be raised automatically every fifth year in line with inflation.** The small business community opposed the existing automatic small purchase threshold increase when it was enacted as part of the FY 1991 DOD authorization bill. We believe that it is only appropriate that Congress exercise regular oversight over the more than 98 percent of the procurement opportunities that fall under $100,000 and the ability of small businesses to participate in the acquisition system, particularly in light of past efforts by the bureaucracy to undermine congressional efforts to assure small business and small disadvantaged business participation.

Unfortunately, both the Armed Services and Government Operations Committees provide for the periodic adjustment of the simplified acquisition threshold for inflation in accordance with a specified formula. If the proposed simplified acquisition procedures, which will be specified by the regulation writers without any statutory standards, in fact result in diminished participation by small businesses, it would be a travesty to let it float upward unchecked doing yet further damage, while excluding Congress from the process of establishing this important threshold. We note that under the proposed statutory language, the first upward adjustment would take place in 1995, possibly even before regulations are issued.

(4) **Link explicitly any increase in the small purchase threshold to an equal rise in the small business reserve.** H.R. 4263, as well as H.R. 2238 as ordered reported by both the Armed Services and Government Operations Committees, make statutorily explicit that the

small business reserve applies to any increase in the small purchase threshold. The Small Business Working Group supports these provisions.

Unfortunately, H.R. 4263, as well as H.R. 2238, as ordered reported by the Armed Services Committee, adopts a fixed $100,000 threshold instead of the term "simplified acquisition threshold", thus excluding the inflationary adjustments which they have adopted with respect to the threshold used for simplified acquisition procedures. If not inadvertent, this speaks volumes regarding intent.

It should be noted that the small business reserve does not ensure that small businesses win all contracts below the current $25,000 small purchase threshold. In fact, an analysis by the staff of the Senate Small Business Committee in the mid-1980's, estimated that small business concerns win slightly less than 50 percent of the contracting opportunities below the current small purchase threshold of $25,000. Before a contracting opportunity can be reserved for exclusive competition among small businesses, a contracting officer must make the determination that there is a reasonable expectation of two or more small business offerors are capable of furnishing products or services meeting the Government's requirements at a price determined to be a fair market price. While the electronic commerce demonstration conducted at Wright-Patterson Air Force Base showed this percentage can be increased to above 90 percent, it made clear that even with complete visibility small firms will not be the exclusive players in a $100,000 small purchase market.

H.R. 2238, as ordered reported by the Armed Services Committee, adds a new Section 4B to the OFPP Act relating to "Micro-Purchases." This provision is referenced in H.R. 4263.

Under such Micro-Purchases procedures, the "Small Business Small Purchase Reserve" would be eliminated with respect to purchases below $2,500. The Micro-Purchase threshold is being strongly advocated by the Clinton Administration to facilitate the use of government credit cards for the making of low dollar-value purchases. In its view, the small business reserve makes this "reinvention" initiative impossible.

The Small Business Working Group believes that the waiver of the small business reserve should apply only if a purchase actually is to be made through the use of the government credit card. Further, it does not seem incompatible to require the individuals making such Micro-Purchases be required to use small business concerns "to the maximum extent practicable." Such a statutory admonition would make clear that the Micro-Purchase Threshold is not an invitation to avoid small business participation when such firms are available and can meet the government's needs in a timely and cost effective manner.

(5) **Make explicit the right of an offeror, especially a small business concern, to submit an offer when small purchase procedures are being used even if the government buyer has obtained the three quotations cited in the FAR as meeting the competition requirement.** In too many instances, three quotations has become the ceiling for the number of offers that will be considered. The statutory standard, maximum practicable competition, should not be interpreted to sanction arbitrariness by a government buyer.

H.R. 2238, as ordered reported by both the Committees on Armed Services and Government Operations, includes a provision granting an explicit statutory right that a timely received offer shall be considered. Unfortunately, the Armed Services Committee's version grants explicit authority to the executive agencies to specify such deadlines when they are not

otherwise established by the statute. Our expectation is that although contracting opportunities must be posted for ten days, the executive agencies will permit contracting officers to establish substantially shorter periods during which offers shall be considered timely. If posting is to be for the purpose of assuring a minimal opportunity for small firms to make offers, than the statute must make clear that offers received during the ten-day period will be considered timely.

(6) **Statutorily establish a threshold for competition.** Both H.R. 4263 and H.R. 2238, as ordered reported by the Armed Services and Government Operations Committees, statutorily prescribe $2,500 as the amount above which contracts must be awarded pursuant to *some form* of competition. The Small Business Working Group supports this provision.

Currently, the so-called threshold for competition is specified in the government-wide FAR as 10 percent of the small purchase threshold. If the threshold were raised to $100,000 and this regulatory threshold were left unchanged, the threshold for competition would rise to $10,000, a sizable amount which was the small purchase threshold until 1986. Further, without some statutory specification, it is perfectly conceivable that the procurement regulation writers could amend the FAR to make the threshold for competition a much higher number, solely at their own discretion.

(7) **Require detailed reporting under the Federal Procurement Data System for any purchase of $10,000 or above.** H.R. 2238, as ordered reported by the Committees on Armed Services and Government Operations, provides for enhanced data collection regarding purchases below $100,000. This will assure that Congress and the small business community

will have hard data to measure the actual effects of simplified acquisition procedures and whether they result in more small business participation as is being touted by proponents.

Unfortunately, the Committees did not adopt our recommendation that detailed reporting should apply with respect to awards of at least $10,000 rather than the $25,000 floor reflected in the provision. In 1986, when the small purchase threshold was increased from $10,000 to $25,000, we lost sight of these many business opportunities. Apparently, the procurement bureaucracy thus far has made a convincing case that such information isn't needed. We don't agree.

(8) **Mandate the use of fast pay procedures in contracts under the small purchase threshold awarded to small businesses.** The Prompt Payment Act Amendments of 1988 included a provision that gave the executive agencies permissive authority to implement fast pay procedures for contracts below the small purchase threshold. However, the regulations implementing this provision virtually assure that fast pay procedures cannot be used. The Small Business Working Group believes it is only equitable that legislation designed to expedite contract solicitation and award for the convenience of the government buyer also should expedite payment to the small business seller for performance.

(9) **Increasing other thresholds impacting on small purchases.** H.R. 2238, as ordered reported by both the Armed Service and Government Opereations Committees, sets forth a list of laws which shall not be applicable to acquisitions below the simplified acquisition threshold. We recognize this as an important step in decreasing the burdens on small business concerns in winning and performing these contracting opportunities.

In particular, we note that H.R. 2238 adopts our recommendation that the Miller Act threshold be increased to the Simplified Acquisition Threshold and that the FAR be modified to provide alternative payment protections for the benefit of subcontractors and suppliers, who frequently are small business concerns.

We would note that neither version of H.R. 2238 proposes any increase in the existing $2,000 threshold for the Davis-Bacon Act of 1933 or the $2,500 threshold for the Service Contract Act of 1965. A simple increase to $100,000 is warranted even if one simply considers an adjustment for inflation. The small business community believes that increases in these thresholds are essential if the full benefits of simplified acquisition procedures are to accrue equally to the small business seller as to the government buyer. At the same time, we strongly oppose any effort to expand the coverage of the Davis-Bacon Act or the Service Contract, as proposed by the Clinton Administration and others.

We further note that the Davis-Bacon Act carries with it not only obligations concerning prevailing wages, but the collateral requirements of the Copeland Act regarding the submission of weekly payroll data. We believe this burdensome and unnecessary paperwork requirement properly should be replaced with a certification requirement. At an absolute minimum, this reporting threshold should be increased to $100,000. Otherwise, we have another example of the Simplified Acquisition Threshold being principally a benefit for government contracting officers.

Extension of Section 1207 Program to Civilian Agencies

Both H.R. 4263 and H.R. 2238, as ordered reported by the Armed Services Committee, would extend to the civilian agencies, including NASA, the preferential

contracting authorities and other requirements currently applicable only to DoD under section 2323 of title 10, United States Code, the codified version of Section 1207 of the "National Defense Authorization Act for Fiscal Year 1987."

Both provisions would modify existing law (added by Public Law 100-656, the "Business Opportunity Development Reform Act of 1988"), which established a permanent Government-wide goal of not less than 5 percent for the participation of small business concerns owned and controlled by socially and economically disadvantaged individuals. Both H.R. 4263 and H.R. 2238, as ordered reported by the Armed Services Committee, would require the reauthorization of the 5 percent goal prior to September 30, 2000.

The Small Business Working Group believes that any extension of the authorities of the Section 1207 program to the civilian agencies should be accomplished by uniform implementing regulations specified in the Government-wide Federal Acquisition Regulation. H.R. 2238, as reported by the Armed Services Committee, explicitly would permit each civilian agency to issue its own implementing regulations. H.R. 4263, while requiring Government-wide "guidance," fails to make an explicit reference to the incorporation of implementing regulations in the FAR.

Further, both H.R. 4263 and H.R. 2238, as ordered reported by the Armed Services Committee, would impose reporting requirements that essentially duplicate those currently required by Section 15(h) of the Small Business Act.

Elimination of Small Business Subcontracting Requirements on Commercial Item Subcontractors

Title VII of H.R. 2238, as ordered reported by the Armed Services Committee, addresses the acquisition of commercial items. As we stated in our testimony before this

Committee's Procurement Subcommittee, as well as the Subcommittee on Legislation and National Security of the Government Operations Committee, the small business community supports increasing substantially the government's acquisition of commercial products. The statutory proposals set forth in H.R. 2238, as ordered reported by the Armed Services Committee, however, raise a number of serious concerns. First, it would establish separate, though currently identical, statutory direction in Title 10 (pertaining to DoD, the Coast Guard and NASA) and in Title 41 (pertaining to all of the other civilian agencies), relating to the acquisition of commercial products.

Second, it seems to encourage a fragmented, agency-specific implementation of this dual conforming statutory direction, almost prohibiting uniform implementation through the government-wide Federal Acquisition Regulation (FAR).

H.R. 4263 would not impair the current subcontracting obligations under Section 8(d) of the Small Business Act.

Regulatory Implementation Through the FAR

Section 7005 of H.R. 2238, as ordered reported by the House Armed Services Committee, adds a new section 10 U.S.C. 2284. This provision explicitly would authorize each of the military services, as well as the Secretary of Defense on behalf of the defense agencies, to issue their own regulations implementing the statutory direction regarding the use of commercial items. Similarly, section 7014 would add a new section 315C to the Federal Property and Administrative Services Act of 1949 directing the head of each executive agency to prescribe agency-specific regulations implementing the parallel statutory direction for the use of commercial items. This requirement would create a flood of agency-specific regulations

that only would impede rather than advance increased participation of firms offering commercial items. H.R. 4263 does not address the issue, given its focus on matters specifically found in the Small Business Act. Obviously, the Small Business Working Group emphatically recommends that the final House bill require regulatory implementation on a government-wide basis through the FAR.

Dangers of "Market Acceptance Criteria"

One of the key topics to be addressed in the regulations required by H.R. 2238, as ordered reported by the Armed Services Committee, would be the establishment of "market acceptance criteria", with which an offeror would have to demonstrate compliance in order to have its offer considered responsive. This is a grave concern for at least four reasons.

First, the Armed Services Committee provision provides no constraints on how the regulations shall define "market acceptance criteria". Our concern is that the regulations could confer on a contracting officer the authority to establish an amount of previous commercial market sales that would be so large as to exclude small commercial suppliers with fully commercial, but limited markets, thus reserving the awards for only the very largest national or international suppliers.

Second, market acceptance criteria authorized for use by the regulations could eliminate participation by so-called contract manufacturers who manufacture products to the specifications of their customers, whether government agencies or private enterprises. Such contract manufacturers would be unable to demonstrate substantial sales of specific products to the general public, if that were adopted as a market acceptance criteria.

Third, there is substantial concern that market acceptance criteria could be used to exclude firms currently furnishing products exclusively to the government in response to detailed design specifications. In the future, such products could be designated as non-developmental items, a category within the statute's broad definition of "commercial items," and such current suppliers could then be excluded for a lack of commercial sales.

Fourth, by making market acceptance criteria a condition precedent for an offer to be considered "responsive," the provision excludes any small firm rejected for failure to meet market acceptance criteria, from seeking from the Small Business Administration an impartial evaluation of its status as a commercial supplier. As written, this provision seems designed to eliminate recourse to the Certificate of Competency Program authorized by the Small Business Act. We believe that the SBA would be no less well-suited than the procuring agency to determine whether a small business concern meets such market acceptance criteria.

Elimination of Small Business Subcontracting Requirements
on Commercial Item Subcontractors

These regulations also would free any subcontractor or supplier furnishing a commercial component, under either a contract for a commercial item or a contract for an other than commercial item, from the existing obligation under Section 8(d) of the Small Business Act to make use of small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals in the performance of the contract. Obviously, we are vigorously opposed to the elimination of this long-standing statutory protection for small firms to participate to the maximum extent practicable as subcontractors and suppliers.

Private sector proponents of this provision maintain that vendors of commercial products or those furnishing commercial components should not be required by government action to disturb their existing subcontractor or supplier base. This argument is inadequate for a number of reasons.

First, the core Congressional purpose in enacting requirements for the use of small business concerns and especially disadvantaged small business concerns at the subcontractor and supplier level was precisely to encourage the disruption of existing supplier relationships. Such existing relationships all too frequently exclude the participation of small businesses and disadvantaged small businesses.

Second, the assertion that such a waiver is necessary to permit the government's acquisition of commercial products flies in the face of substantial experience. During the 15 years since the enactment of these subcontract participation provisions as part of Public Law 95-507, the government successfully has acquired a broad range of items that unquestionably are commercial in nature. One merely needs to cite the fact that civilian and military agencies acquire commercial copying equipment, commercial vehicles, commercial audiovisual equipment, commercial food service equipment, commercial construction equipment, commercial computer equipment, commercial communications equipment, to name but a few types of truly commercial products that today can be found in use throughout the government. We would submit that it is those who would seek to bring in other items that fit within the extremely broad definition of commercial items included in this legislation that are the principal advocates of this effort to exclude small business participation at the subcontract level.

We find it ironic that the very same companies that are urging upon Congress the elimination of any requirement to use American small businesses as subcontractors and suppliers because such would be incompatible with commercial buying practices, frequently fiercely outbid each other in the amount of offsets being offered in overseas sales to foreign governments, government-controlled corporations or major foreign commercial customers. These offsets essentially require these U.S. multinational corporations to make countervailing purchases from the entity to which they are seeking to make the sale of the U.S. product. Frequently, these offset requirements will compel the U.S. manufacturer to incorporate components manufactured by small business concerns in the nation in which the U.S. firm is making the sale or to purchase other products from small firms in that country. With increasing frequency, these offset requirements result in the exporting of manufacturing opportunities currently held by small U.S. firms.

The Small Business Working Group urges the Congress to respond by establishing requirements that make the use of small business as subcontractors and suppliers a major factor in the award of prime contracts for commercial items as well as other items. Such a requirement would overcome the diminished impact of existing subcontract requirements which are negotiated with the successful offeror after contract award. By making the use of American small businesses an important element in the award of the contract, such a provision would harness the fierce competition for the award of U.S. government contracts to the benefit of U.S. small business concerns and disadvantaged small business concerns.

To be truly effective, the provision should not only make the consideration of small business and disadvantaged small business participation an evaluation factor in the contract

award process, it also should establish minimum percentages of small business and disadvantaged business participation in order for an offer from a major firm to be considered as responsive to the government's solicitation.

Our foreign trading partners do no less for their small businesses in their acquisition of commercial and other government-unique products. The Small Business Working Group believes it is time for the United States Government to adopt similar requirements for the benefit of U.S. small business concerns.

Concerns with Including "Commercial Services"

It is our understanding that H.R. 2238, as ordered reported by the Armed Services Committee radically expands the definition of commercial item by the inclusion of services. Given our belief that virtually any service could be identified as a "commercial service" under the broad statutory definition of what would constitute a "commercial item," such an expansion would have an especially detrimental effect by virtually eliminating opportunities for subcontract participation by small business concerns, including small disadvantaged businesses.

Our deep concern with this potentially severe restriction of opportunities in the subcontracting market must be viewed in the context that other provisions of the bill such as those encouraging the use of task and order delivery order contracts in the services arena, so-called contract bundling, will foreclose us simultaneously from the prime contract and subcontract markets. Again, acquisition improvement through encouraging the procurement of more commercial items (defined to include "commercial" services) will mean that small business concerns will get to observe the federal market rather than participate in it.

H.R. 4263 does not modify or impair the existing requirement regarding subcontractor participation mandated by Section 8(d) of the Small Business Act.

Response Times for Commercial Item Procurements No Longer Protected

Section 7023 of H.R. 2238, as ordered reported by the Armed Services Committee, would amend section 18 of the OFPP Act relating to solicitation notices and assured minimum times to fashion responses. Under current law, a contracting opportunity in excess of the small purchase threshold ($25,000) must be announced in the *Commerce Business Daily* for at least 15 days prior to the release of the solicitation for offers. This gives prospective offerors, particularly small business concerns, the time to make the business judgment of whether to compete for the contracting opportunity. Section 18 and a parallel provision, section 8(e) of the Small Business Act, also assures that prospective offerors, especially small business concerns, have adequate time to prepare their offers before the deadline for the submission of bids or proposals. Under current law, an executive agency must afford 45 days for the submission of offers in response to a solicitation for research and development services or 30 days in the case of solicitations for all other types of products or service. As noted earlier, the simplified acquisition threshold would eliminate these protections with respect to the 20 million contracting opportunities that are likely to fall below the $100,000 threshold. This provision of the Armed Services Committee Substitute would now eliminate those protections for anything an agency contracting officer determines is a commercial item. The small business community would be left at the mercy of the regulation writers who are charged under this provision with "establishing appropriate time limits" for the submission of such bids or proposals for commercial items.

Basically, this streamlining initiative is taking away the protections which as recently as 1984, the Congress determined were essential for the protection of prospective small business government contractors, since the agency contracting officers too frequently had adopted response times that did not permit adequate time for any new entrant to prepare an offer likely to be susceptible to award. We are unable to identify any persuasive reasons to reassure ourselves that the elimination of statutorily-specified minimum times for the preparation of offerors will not return us to the essentially hostile environment that necessitated Congressional action in 1984. Possibly the adoption of different minimum response times is appropriate for commercial item procurements (or procurements under the Simplified Acquisition Threshold), but the absence of any precise statutory direction by Congress is only an invitation for the procurement bureaucracy to repeat past abuses.

Conclusion

The Small Business Working Group on Procurement Reform commends Chairman LaFalce for raising objections to the proposed Armed Services Committee Substitute to H.R. 2238, for introducing H.R. 4263, the "Small Business and Minority Small Business Procurement Opportunities Act of 1994," and for holding this hearing. It has created a crucial opportunity to focus attention on the potential for grave harm to small business contractors (including those owned and controlled by socially and economically disadvantaged individuals or women) as the House moves forward to the coordination of a modified version of H.R. 2238, the "Federal Acquisition Improvements Act."

All segments of the small business community will support efforts to incorporate into a comprehensive substitute to H.R. 2238, provisions suggested in testimony by the Small

Business Working Group and many of its members, as well as modified versions of the provisions in H.R. 4263. The Working Group would look forward to working with this Committee and the Committees on Government Operations and Armed Services to craft specific language to improve the final House version of H.R. 2238 so that it truly improves the potential for small business participation in a streamlined Federal procurement system.

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